

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANTS

291

United States Court of Appeals
For the District of Columbia Circuit

No. 17,216

ROBERT S. McNAMARA, Secretary of Defense, ET AL.,
Appellants,

v.

JOSEPH W. DICK, ET AL., *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

JOSEPH D. GUILFOYLE,
*Acting Assistant Attorney
General,*

United States Court of Appeals
for the District of Columbia Circuit

DAVID C. ACHESON,
United States Attorney,

SHERMAN L. COHN,
EDWARD BERLIN,
*Attorneys,
Department of Justice,
Washington 25, D. C.*

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Joseph W. Stewart

CLERK

QUESTIONS PRESENTED

1. Whether the reassignment of some of the duties assigned to the position of Analyst and Scheduler in the naval shipyards, to the position of Planner and Estimator constituted a "transfer of function" within the meaning of the Veterans' Preference Act and the applicable administrative regulations so that the Analyst and Schedulers had the right to transfer to the Planner and Estimator rating prior to the application of the reduction-in-force procedures, or whether there was only a reassignment of duties within a function so that no transfer rights existed.

2. Whether, assuming a "transfer of function" had occurred, the Analyst and Schedulers had the absolute right to receive promotions to the higher rated and higher paid Planner and Estimator rating.

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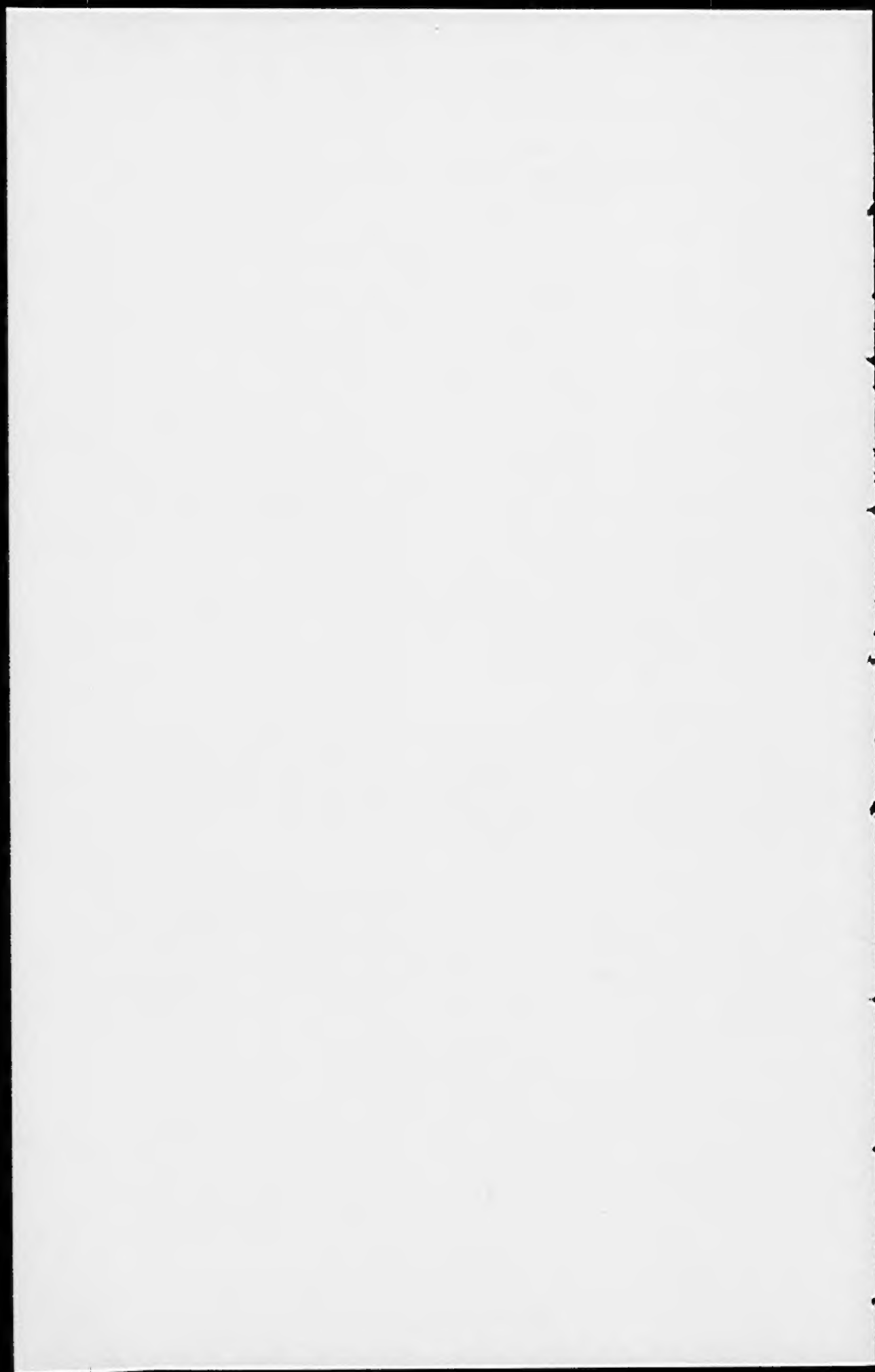
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BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of the United States District Court for the District of Columbia, entered on March 14, 1962 (J.A. 174). Notice of appeal was filed on May 11, 1962 (J.A. 174). The jurisdiction of the district court was invoked under 5 U.S.C. 1009 (J.A. 3). This Court's jurisdiction rests on 28 U.S.C. 1291.

STATEMENT OF THE CASE

1. The Reduction in Force

The Department of the Navy established, in 1950, a Production Planning and Control system for the programming of work performed within the various naval shipyards (J.A. 13). Employees in the shipyards who held the existing rating of Planner and Estimator were assigned the responsibility for drawing up preliminary plans for

vessel repair and maintenance work (J.A. 10). A new rating, denominated Shop Analyst and Scheduler, was created, and the employees who acquired this rating were assigned the task of refining into greater detail the preliminary plans prepared by the Planner and Estimators (J.A. 10).¹ The Planner and Estimators were in a different competitive level from, and received a higher rate of pay than, the Analyst and Schedulers (J.A. 163). Appellees were employed as Analyst and Schedulers (J.A. 5).

In November of 1959, as the result of a study conducted by the Department of the Navy's Bureau of Ships, a reorganization of the existing Production Planning and Control Program was directed (J.A. 95). The reorganization was prompted by the realization that there was, in fact, a substantial duplication of effort and repetition of thought processes between the Planner and Estimators and the Analyst and Schedulers (J.A. 165, 166). It was determined that a reorganization of the planning operation would result in a considerable saving in planning overhead (J.A. 95). The duties of the detailed planning that were formerly the responsibility of the employees holding the Analyst and Schedulers rating were assigned to the Planner and Estimators, who in addition retained their previously assigned tasks (J.A. 166, 167). Other tasks formerly assigned to the Analysts and Schedulers were reassigned to other employees in the shipyards. The Analyst and Scheduler rating was abolished (J.A. 166). A reduction-in-force procedure was therefore applied to that competitive rating, which constituted a separate level within the shipyards, and the appellees were accordingly reassigned to those other positions for which they were qualified that necessitated the least grade reduction (J.A. 167).

In order to perform the increased workload of the Planner and Estimators, additional positions were created in that rating. To fill these jobs the Navy Department held a competitive examination and urged all former

¹ There is no separate position for a Planner and for an Estimator. The one rating, Planner and Estimator, is given to each individual so rated. A similar situation exists as to the position of Shop Analyst and Scheduler.

Analyst and Schedulers to compete for the higher-rated and higher-paid positions (J.A. 54). Those qualifying received promotions to the higher grade positions. No former Analyst and Scheduler was involuntarily separated.

2. Proceedings in the Civil Service Commission

A number of appeals were filed with the Commission by former Analyst and Schedulers who were thus affected by the reduction-in-force (J.A. 19). They contended that the reorganization had resulted in a "transfer of functions" and that under Section 12 of the Veterans' Preference Act, 58 Stat. 390, as amended, and the pertinent regulations of the Commission and the Navy Department, they were entitled to be transferred to the Planner and Estimator rating along with their previously assigned duties prior to the application of the reduction-in-force procedures (J.A. 19). In order to resolve the issue common to each of the appeals, i.e., whether there had been a transfer of a function from the Analyst and Scheduler rating to the Planner and Estimator rating, representatives of the Department of the Navy and of the National Association of Naval Shop Analyst and Schedulers stipulated that there should be selected twelve representative cases (six each from the Norfolk and Philadelphia shipyards) to be presented before the chief of the Commission's Appeals Examining Office in Washington, D.C. (J.A. 19, 20). The cases so selected were consolidated and heard on August 3, 1960, and each side was permitted to present oral and written evidence and to submit supporting memoranda (J.A. 161).

The Appeal's Examiner, by decision dated September 2, 1960, reviewed the evidence in detail and concluded that, on the basis of the facts presented, no transfer of function had occurred within the meaning of the pertinent statute and regulations (J.A. 169). The examiner noted (J.A. 167):

Neither the statute or (sic) regulations cited provide that a specific duty or task is a function per se. The word function is not defined in the law or the regula-

tions and it seems to us that a function is more or something different from the duties or tasks that might be assigned to a particular position.

• • • • •

In the instant case, we have a situation where the Planner and Estimator has been directed to make a more detailed job order than the one he made heretofore. This eliminates the necessity for the Shop Analyst and Scheduler to prepare the detailed job order.

Appellees, by letter of September 7, 1960, appealed from this adverse decision to the Commission's Board of Appeals and Review. Upon review of the appellate record, the Board of Appeals and Review submitted the case to the Commission (J.A. 170).

The Commission, on December 7, 1960, denied the appeal, observing in part (J.A. 171):

As to the facts, the Commission finds from the evidence of record that the function, the identity of which is the prime issue in this appeal was, and still is, the maintenance of planning and production control in each Naval Shipyard. The Commission further finds that, whereas prior to the reorganization, the planning and production control function operated with the Planners and Estimators furnishing broad outlines of the repair and maintenance work to be performed at the Shipyards, with the Shop Analysts and Schedulers following through with more detailed instructions on the same work orders the function has since the reorganization, been so rearranged that the preparation of the detailed instructions formerly supplied by the Shop Analysts and Schedulers has been assigned to Planners and Estimators. The evidence also discloses that the Planners and Estimators have, prior to and since the formal inception of the production control system, performed work the substance of which has been preliminary to and related to the work performed by the Shop Analysts and Schedulers, all of which work was and is identified with the planning and production control function in each Naval Shipyard. In reality the primary work of the Planners and Estimators and the primary work of the Shop Analysts and Schedulers were, prior to

the reorganization, operating parts of a single function and not independent and separable functions. As a result of the reorganization the operating parts of the Shipyards' planning and production control system were streamlined to eliminate one of the parts that was found to be superfluous, i.e., the shop Analyst and Scheduler rating. In view of the above findings of fact, the Commission agrees with and affirms the conclusion of the Appeals Examining Office that no transfer of function occurred in the various Shipyards as a result of the reorganization so as to entitle the Shop Analysts and Schedulers to move into the Planning Departments where the Planner and Estimator positions were located before a reduction in force could ensue.

Since it is established by the facts that a transfer of function did not take place, a further discussion of the law, regulations, or procedures governing the rights of employees in a transfer of function is not essential to this case.

The Commission further finds that a reorganization occurred which necessitated abolishing the Shop Analyst and Scheduler positions and which required the application of reduction-in-force procedures to determine the rights of those holding such positions.

3. Proceedings in the District Court

Appellees filed suit in the district court on March 10, 1961 (J.A. 3), alleging, *inter alia*, that the Commission had acted unlawfully in failing to transfer the Analyst and Schedulers to the Planner and Estimator rating prior to the application of the reduction-in-force procedure, and sought (1) declaratory and injunctive relief to "restore" each to the "positions from which each was wrongfully and illegally removed", and (2) an award "of the rights, benefits and privileges each would have had if each had not been" subject to the reduction-in-force (J.A. 3-8). The case was heard on cross-motions for summary judgment, each side submitting a supporting memorandum (J.A. 174). The district court on March 14, 1962, without opinion granted appellees' motion and denied that of the Government (J.A. 174).

STATUTE AND REGULATIONS INVOLVED

Section 12 of the Veterans' Preference Act, 58 Stat. 390, 5 U.S.C. 861, the pertinent parts of both the Civil Service Commission's Regulations, 5 C.F.R. 20, and the Navy Civilian Personnel Instruction, NCPI 170, applicable to retention preference and reductions in force, and the pertinent part of Naval Civilian Personnel Instruction, NCPI 250.4-6 are reprinted in the appendix to this brief, *infra*, pp. 27-41.

STATEMENT OF POINTS

1. The district court erred in holding that a "transfer of function" had occurred, within the meaning of 5 U.S.C. 861 and the pertinent Civil Service Regulations, when certain duties performed within the Department of the Navy were transferred from the Shop Analyst and Schedulers to the Planner and Estimators.

2. The district court erred in failing to conclude that, even assuming *arguendo* that a "transfer of function" had occurred, the appellees were appropriately subjected to a reduction-in-force and accorded all of the rights due them thereunder.

3. The district court erred in failing to conclude that the Civil Service Commission properly afforded appellees all of the relief to which they were entitled to under the Veterans' Preference Act, the applicable administrative regulations, and the governing case law.

SUMMARY OF ARGUMENT

Numerous decisions of this Court have articulated an extremely limited scope of review of Civil Service Commission decisions regarding the merits of a person's claim to a particular position in the federal civil service, *E.g.*, *Powell v. Brannan*, 91 U.S. App. D.C. 16, 196 F. 2d 871. It is equally well settled that administrative regulations issued pursuant to statutory authority are presumptively valid (See *Boske v. Comigore*, 177 U.S. 459, 470; *Carter v. Forrestal*, 85 U.S. App. D.C. 53, 175 F. 2d 364) and that

the agency's interpretation of its own regulation will be accepted unless it is unreasonable, arbitrary or capricious. See *Chapman v. Sheridan-Wyoming Co.*, 338 U.S. 621, 631; *Pressentin v. Seaton*, 109 U.S. App. D.C. 61, 284 F. 2d 195. Clearly the regulations promulgated by the Civil Service Commission and the Department of the Navy, and the interpretations accorded them by those agencies herein, effectuates the Congressional intent underlying the passage of Section 12 of the Veterans' Preference Act, 58 Stat. 390, 5 U.S.C. 861. Moreover, it is clear from an examination of the facts in this case that the Navy Department and the Civil Service Commission properly applied these regulations to the 1959 reorganization of the planning function of the naval shipyards. Accordingly, the district court erred in substituting its judgment for that of the administrative bodies charged with the responsibility for determining when a "transfer of function" has occurred.

Moreover, even if a transfer of function had occurred, the reduction-in-force procedures were properly applied to appellees competitive level. It is clear that neither the Veterans' Preference Act nor any of the applicable regulations confer upon appellees an absolute right to a promotion to a position on a higher competitive level. See *Cutting v. Higley*, 98 U.S. App. D.C. 288, 235 F. 2d 515, certiorari denied, 352 U.S. 883, and that this is the relief which the district court's order bestows upon them.

ARGUMENT

It is of course fundamental that, except as is established by an Act of Congress or an administrative regulation, there is a vested right in a federal employee neither to the retention of his position nor to any particular procedure in his removal from that position. *Eberlein v. United States*, 257 U.S. 82; *Keim v. United States*, 177 U.S. 290; *Cranshaw v. United States*, 134 U.S. 99; *Green v. Baughman*, 100 U.S. App. D.C. 187, 243 F. 2d 610, certiorari denied, 355 U.S. 819; *Boylan v. Quarles*, 98 U.S. App. D.C. 337, 235 F. 2d 834, and authorities cited therein.

Therefore, in undertaking to review personnel actions of executive agencies, this Court has consistently refused to interfere with such actions except to insure substantial compliance with procedural requirements prescribed by statute or regulation. See, e.g., *Hofflund v. Seaton*, 105 U.S. App. D.C. 171, 265 F. 2d 363, certiorari denied, 361 U.S. 837; *Hargett v. Summerfield*, 100 U.S. App. D.C. 85, 243 F. 2d 29, certiorari denied, 353 U.S. 970; *Wagner v. Higley*, 98 App. D.C. 291, 235 F. 2d 518, certiorari denied, 352 U.S. 936; *Benenati v. Young*, U.S. App. D.C. , 220 F. 2d 383.

We think it well to reiterate that in Civil Service cases the task of the courts is a limited one. Certainly they cannot undertake to pass on a plaintiff's qualifications for any given post, or to compare them with those of an incumbent. It is not within their province to weigh the merits of a person's claim to a Federal job. Congress has established administrative machinery to make these determinations. Where there has been a substantial departure from applicable procedures, a misconstruction of governing legislation, or like error going to the heart of the administrative determination, a measure of judicial relief may on occasion be obtainable. But no such basis for relief has here been laid. [*Powell v. Brannan*, 91 U.S. App. D.C. 16, 17, 196 F. 2d 871, 873.]

The instant case presents no "substantial departures from applicable procedures [or] misconstruction of governing legislation * * *." Involved here is simply an administrative determination that the efficiency of the operations of the Navy's shipyards, would be promoted by a reallocation of the planning and programming duties between employees engaged in such activities within the various shipyards. Just as it is for the Civil Service Commission to determine who are "competing employees" within the meaning of the Veterans' Preference Act, *Elder v. Brannan*, 341 U.S. 277, 283; *Fass v. Gray*, 91 U.S. App. D.C. 28, 197 F. 2d 587, certiorari denied, 344 U.S. 583, so here it is for the Commission to determine when there has been a "transfer of functions." Equally beyond judicial review

is the administrative determination that a specified group of employees lack the qualifications requisite for promotion. *Powell v. Brannan, supra; Cutting v. Higley*, 98 U.S. App. D.C. 288, 235 F. 2d 515, certiorari denied, 352 U.S. 883.

As we shall show, the record in this case plainly established the reasonableness and correctness of the administrative decision made by the Department of the Navy and approved by the Civil Service Commission, and since, as we show below, none of appellees' procedural or substantive rights were violated, the court below was clearly in error in ordering summary judgment for appellees. Accordingly, unless this Court is to ignore its consistent refusal to substitute its own judgment for that of the agencies on a matter peculiarly within the recognized scope of administrative expertise, the judgment of the court below must be reversed.

A. THE DISTRICT COURT ERRED IN OVERTURNING THE CIVIL SERVICE COMMISSION'S DETERMINATION THAT THERE HAD NOT BEEN A TRANSFER OF FUNCTION

1. The Veterans' Preference Act and the Implementing Regulation

Section 12 of the Veterans' Preference Act provides that when "any or all of the functions of any agency are transferred to * * * some other agency or agencies, all preference employees in the function or functions transferred * * * shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies shall appoint additional employees from any other source for such positions." 5 U.S.C. 861, *infra*, p. .³ The Civil Service Commission, in discharge of its statutory responsibility (5 U.S.C. 860), implemented this requirement by promulgating a regulation which provides that, "before any reduction is made in connection with the transfer of any or all of the functions of any agency to another continuing

³ This right of transfer has been extended to the transfer of functions within an agency as well as between agencies. Civil Service Commission, Departmental Circular No. 740, p. 1, issued January 10, 1954.

agency, all competing employees in positions identified with such function or functions shall be transferred to such continuing agency * * *." 5 C.F.R. 20.8(a), *infra*, p. 28. On June 23, 1960, the Commission issued a further guide for the implementation of Section 12 and the regulations promulgated thereunder. Departmental Circular No. 740, Supplement No. 2, set out in full at J.A. 145. A "function" is therein defined as a "clearly identifiable part of an agency's mission, regardless of the manner in which it is performed, and all the integral parts of the mission." The Commission emphasized that a function must be distinguished from an individual job or task as well as from the overall mission of the agency. Rather, "any activity carried on by an agency which can be identified as a recognizable segment of its overall area of responsibility may be a function. For example, administrative services such as procurement, storage, issue of supplies, budgetary planning, personnel management, etc., can be identified as functions which are integral parts of agency's mission."

A "transfer of function" is defined as "the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, or the movement of the competitive area in which the function is performed to another commuting area."³ By way of explanation the commission pointed out that, for there to be a "transfer of function," the function must "reappear[s] in identifiable form at a new location despite its disappearance or discontinuance at its old location." The Commission additionally made clear that the "movements of activities or assignments entirely within a competitive area * * * are not considered

³ "Competitive area" is defined as "that part of an agency usually within a local commuting area, in which employees are shifted (reassigned, promoted, and demoted) under single administrative authority, and within which competitive levels are established in reductions in force." 5 C.F.R. 20.2(e).

"Competitive level" is defined as "all similar positions within a competitive area in which employees could be readily interchanged, without undue interruption to the work program. (Such positions are in the same grade or occupational level.)" 5 C.F.R. 20.2(f).

to be transfers of functions within the meaning of the regulations. Such shifts are reorganizations within the competitive area and if any employees are to be separated or demoted as a result of the shifts the reduction in force procedures must be applied." Finally, the Commission pointed out that, for there to be a transfer of function, the performance of that function must have entirely ceased in one competitive area and have begun in another competitive area. That is, if there are two different offices performing portions of an identical function and one has a decrease in workload calling for a reduction-in-force while the second has an increase in workload calling for a new hiring, there is no transfer of function. However, if the second office takes over a function which it had not previously performed and the performance of which has ceased in the first office, then a transfer of function has occurred.

The Navy, applying the Commission's criterion, has determined that a transfer of function in its operation occurs when "the work being performed by one service or naval activity is to be taken over by another service or naval activity." Navy Civilian Personnel Instruction,⁴ 170.9-4b(1), *infra*, p. 34. The term "service" is defined to include "each military department of the Department of Defense and the Office of the Secretary of Defense." NCPI 170.9-4, *infra*, p. 34. The naval activity involved in this case is the "Naval Shipyard." NCPI 170.4-1a(2) (b), set out at, *infra*, p. 31 and discussed at, *infra*, p. 18. Therefore, a function is transferred within the Navy only when an identifiable part of the Navy's mission is transferred from one Navy shipyard to another or from a shipyard to some other naval activity.

It should be noted that the Civil Service Commission's circular of June 23, 1960, in no way established new criterion for the determination of when a transfer of function has occurred within the meaning of the Veterans' Preference Act. Rather, it was but a codification of what had consistently been understood to have been meant by

⁴ Navy Civilian Personnel Instruction will be hereafter cited as NCPI.

the term "transfer of function."³ Moreover, as we show below, this interpretation most assuredly effectuates the

³ See, for example, the official memorandum of the Commission's General Counsel, dated May 19, 1959 explaining the applicability of Section 12 of the Veterans' Preference Act. The memorandum was prompted by the disestablishment of one of the Navy's Overhaul and Repair Facilities and presented a factual situation closely analogous to the one at bar. The memorandum, which is set out in full at J.A. 34, provided in part as follows:

We do not believe that the word "function" refers to the many individual duties or items of performance on the job which when considered in the conglomerate determine the overall mission or task of the agency as referred to above.

.

As indicated hereinbefore, we recognized that an agency may have a single "function" that is performed at several different locations. The elimination of one of the performance locations would not constitute a transfer of functions. This is so because the "function" being performed at the eliminated location is not being transferred. That "function" already exists at the locations which are not being eliminated. These non-eliminated locations are not gaining any "function" they did not already have. At the most, all that any one of them can gain is an increase in workload or the acquisition of a different type of work within the established "function". As stated earlier herein, we do not consider workload or items of duty as the "functions" referred to in section 12 of the Act.

.

It is important to contrast the geographical-area situation with the overall-function situation such as the Navy Department alleges to exist with its Overhaul and Repair Facilities. In the instance in which there is a true overall-function situation, the agency's "function" is performed at several different points but without geographical limitation on the performance of the "function" at any particular point. In such a situation, if a consolidation occurs so that the overall "function" will be performed at a fewer number of points, there is no transfer of function. The reason for this is that no one of the remaining points is acquiring a "function" that it never had.

.

As a broad generalization it can be said that a transfer of function occurs when the function (that is, the overall mission or task as defined hereinbefore) is eliminated at one point and added at a different point. There is no transfer of function when there is merely a consolidation so that a function that has been performed at more than one point is now performed at fewer points. To generalize further, it can be said that there exists a clear distinction between a transfer of function and a reduction in force. When there is nothing more than a reduction in the number of personnel performing a single function, the action is a reduction in force. When there is a movement of the function from one location or authority to another (either with or without a reduction in the number of personnel) the action is a transfer of function.

congressional purpose underlying the passage of the reduction-in-force provision. And it is well settled, of course, that administrative regulations issued, as here, pursuant to statutory authority are presumptively valid unless "plainly and palpably inconsistent with law." *Boske v. Comigore*, 177 U.S. 459, 470; *Edwards v. Madigan*, 281 F. 2d 73 (C.A. 9); *Carter v. Forrestal*, 85 U.S. App. D.C. 53, 175 F. 2d 364. Equally settled is the principle that an agency's interpretation of its own regulation will be accepted unless it is unreasonable, arbitrary or capricious. *Chapman v. Sheridan-Wyoming Co.*, 338 U.S. 621, 631; *Bowles v. Seminole Rock Co.*, 325 U.S. 410, 413-414; *Presentin v. Seaton*, 109 U.S. App. D.C. 61, 284 F. 2d 195. Therefore, one claiming that an administrative regulation or interpretation is invalid has the heavy burden of making "its invalidity so manifest that the court has no choice except to hold that the Secretary has exceeded his authority and employed means that are not at all appropriate to the end specified in the act of Congress." *Boske v. Comigore*, *supra*, at 470; *Review Committee, Venue VII, Etc. v. Willey*, 275 F. 2d 264 (C.A. 8). Finally, although we are not here faced with the problem (for, as we have shown, *supra*, p. 12, the Civil Service Commission's interpretation of its own pertinent regulation (5 C.F.R. 20.8(a)) preceded the administrative action that is the subject of this case) we point out that the retroactive application of administrative interpretations has been upheld. *Securities & Exchange Commission v. Chenery Corporation*, 332 U.S. 194, 202; *National Labor Relations Board v. Guy F. Atkinson Co.*, 195 F. 2d 141, 148 (C.A. 9).

2. The Analyst and Schedulers Were Not Engaged in the Performance of a Function Distinct From That Performed by the Planner and Estimators

Turning to the application of the above regulations, it is, of course, critical to first determine what, as established by the record, constitutes the function performed herein. The identification of that function was the prime issue before the Civil Service Commission (J.A. 171).

After a close scrutiny of the operative facts, the Commission concluded that the Shop Analyst and Schedulers and the Planner and Estimators were engaged in the performance of constituent tasks of the same function, to wit, Planning and Production Control (J.A. 171). To prevail it was incumbent upon appellees to show that the Analyst and Schedulers were performing a function distinct from that being performed by the Planner and Estimators. To appreciate the correctness of the administrative finding that this was not the case, it is necessary to understand the situation as it existed prior to, and after the reorganization that gave rise to the instant dispute.

Between 1954 and 1959, work was programmed in the naval shipyards in the following manner:

The Navy Bureau of Ships, or some authority in the Naval Force Afloat, would advise a naval shipyard that a vessel or vessels would arrive for specified repair work (J.A. 162). The Design Division of the Shipyard's Planning Department, upon receipt of the work authorizations, would prepare blueprints and design specifications (J.A. 162). The Planner and Estimators, after reviewing the work-authorizations, would then develop estimates of what the required work would cost, based on standard data and past experience, and issue work booklets, listing all of the work items which were planned to be accomplished, complete with cost estimates for each shop involved. They would reserve needed materials in the Supply Department or alert that Department that certain materials would be needed by specified dates (J.A. 163). When possible they would conduct on-board pre-arrival inspection of vessels to insure that they had the benefit of the most accurate information possible for purposes of preliminary planning and estimating (J.A. 23). Finally, they would prepare Job Orders or material and progress sheets and material requisitions which would then be routed to the Shop Analyst and Schedulers (J.A. 163). The Job Order contained a general description of the work to be performed together with necessary specifications, a designation of the particular shops to be involved

and the duties for which each would be responsible, an estimate of the man days involved, and an estimate of the total labor, overhead and material costs (J.A. 24, 110).

The Job Order would then be routed to the Analyst and Schedulers for the preparation of a Job Process Card (J.A. 28). The Analyst and Schedulers would thereon break down the work assignments listed on the Job Order into each of the specific tasks that would have to be performed to accomplish the overall job (J.A. 163). The Process Card would specify the number of man hours each task should require, schedule the work chronologically, giving each shop inclusive dates within which to do the tasks assigned it, and schedule the arrival of needed material (J.A. 111). The Analyst and Schedulers would also prepare Job Instruction Cards for the supervisors and mechanics in the shops who would ultimately be assigned the performance of the actual work (J.A. 30). In addition, the Analyst and Schedulers did some local purchasing of materials (items under \$100), arranged for "assist" work by other shops, routed jobs, followed-up on material requests, procured plans and specifications, and developed standard estimating data and conducted work sampling and methods improvement studies (J.A. 114). Finally, the Analyst and Schedulers would receive delinquency reports from supervisors when jobs fell behind schedule and would endeavor to get corrective action through higher supervisory authority (J.A. 31).

In November of 1959, as the result of a study conducted by the Department of the Navy's Bureau of Ships, a reorganization of the Production Planning and Control Program then in effect in the several naval shipyards was directed (J.A. 165). The Shop Analyst and Schedulers' position was discontinued (J.A. 166). The Planner and Estimators were instructed to prepare a single document called a Job Order Process Card which replaced the three documents prepared prior to the reorganization, i.e., the Job Order, the Process Card, and, the Job Instruction Card (J.A. 33, 34). The new Job Order Process Card shows in detail the work operations to be performed, the

labor, overhead, and material costs, the shops involved, the estimated number of manhours, the work specifications, and the starting and completion dates for each shop (J.A. 118). Copies are forwarded to each of the shops involved for deliver direct to the first line supervisor or mechanic who is to be responsible for the accomplishment of a particular work item or items (J.A. 34, 35). The Planning Department continues to prepare material and progress lists, and to requisition material (J.A. 115). Shop workload data is now prepared by electronic computer (J.A. 35).

Another change resulting from the reorganization was the establishment of a Shop Planner position in each of the shops within the Production Department (J.A. 166). These positions are concerned chiefly with the routing and progress (follow-up) work in the shops, the scheduling of work intra-shop, and the submitting of delinquency reports to higher supervisory authority (J.A. 35, 115). Still another change resulting from the reorganization was to concentrate in the Production Engineering Division of the Production Department responsibility for the developing of standard estimating data and for the conducting of work sampling and methods improvement studies (J.A. 36).

The 1959 reorganization was prompted by the realization that there was a substantial duplication of effort and an overlapping of planning activities within the Planning and Production Departments, and that considerable savings in planning overhead could be accomplished through a re-vamping of the planning operation (J.A. 95, 165). Paperwork generated by the existing system appeared to be excessive and there was an unnecessary repetition of thought processes. For example, a Planner and Estimator, in estimating the man hours and materials needed for each job, had to go through the same thought and calculating process as did the Analyst and Scheduler when the latter prepared the Process and Job Instruction Cards. It was, therefore, determined that a reorganization would greatly improve the efficiency of the federal service (J.A. 34, 95).

We do not dispute the fact that some of the duties formerly performed by Analyst and Schedulers are now, as a result of the reorganization, being performed by Planner and Estimators. But it does not necessarily follow that a "function" has been transferred. We submit that it is for the administrative expertise to designate the appropriate "function" and that the characterization herein made by the Civil Service Commission, to wit, the "maintenance of planning and production control in each naval shipyard" (J.A. 171) is appropriate and reasonable. The Planning and Production Control function encompasses three broad aspects: (1) master or advance planning, (2) job order planning, and (3) shop planning. Prior to 1954 the first two sets of duties were performed by the Planner and Estimators, and the third in the shops. Thus, the *planning function* was performed in both locations.

When the Production Planning and Control Program was established in 1954, it emphasized, among other things, more detailed planning in the shops. However, it did not discontinue the planning duties performed by the Planner and Estimators. *The Planning operations continued to be performed by both groups of employees, to wit, the broad outline (Job Order) being sketched by the Planner and Estimators, the details, being filled in by the Analyst and Schedulers.* In 1959, review of the Production Planning and Control Program revealed considerable duplication between the work of the Planner and Estimators and that performed in the shops. To eliminate this duplication, some of the detailed planning formerly performed in the shops was assigned to the Planner and Estimators, certain other duties remaining in the shops. Thus, *planning duties continue to be performed in both locations.*

In sum, the total planning function was prior to, during, and following the reorganization of the Production Planning and Control Program performed in two divisions, with each of these divisions receiving increases or decreases in workload items as the function itself developed within its broad outlines. In reality, as the Commission found, the primary work of both the Planner and Esti-

mators and of the Analyst and Schedulers were, prior to the reorganization, operating parts of a single function and not independent and separable functions. The reorganization merely served to streamline the Planning and Production Control function by eliminating one of the parts that was found to be superfluous, i.e., the Shop Analyst and Schedulers rating.

3. Even if the Analyst and Schedulers Were Engaged in the Performance of an Independent Function It Was Not Transferred to a Different Competitive Area

The Civil Service Commission has provided that for there to be a transfer of function there must have been a transfer "of a continuing function from one competitive area and its addition to one or more other competitive areas * * *." Department Circular No. 740 Supplement No. 2 (J.A. 145). The Department of the Navy, in conformity with the Commission's interpretation (*supra*, p. 12), designated as its normal competitive area a "Naval Activity." NCPI 170.4-1a. The Naval Activity applicable in the instant case is the "Naval Shipyard." NCPI 170.4-1a (2)(b). This is consistent with "the policy of the Navy Department to make competitive areas as broad as possible, so as to protect the equity of employees to the maximum extent." NCPI 170.4-1b(2)(a)1. That is, to insure that employees with seniority will enjoy maximum job security when a reduction in force is necessary, the competitive area was made to include the entire shipyard. Hence, requests for the establishment of smaller competitive areas must receive both the approval of the Navy Department and the Civil Service Commission. NCPI 170.4-1b(2)(b).

It is clear that, irrespective of what is the appropriate function herein, it remained within the local navy yards and is now being performed by other personnel in the same competitive area, i.e., in the same naval shipyard, and it is to these other positions that appellees seek promotion.

To be sure, appellees are in no way aided by the Navy Department's transfer of function definition for it is clear

that the "work being performed by one service or naval activity" has not been "taken over by another service or naval activity." NCPI 170.9-4b(1).

This being so, a transfer of function could not, under the statute, as implemented by the regulations of the Civil Service Commission and the Department of the Navy, have taken place. The reasonableness of the regulatory scheme is apparent. It would surely be detrimental to the federal civil service, as it would be to a private enterprise, if the administrative employer could not delegate, as he saw fit, the assignment of particular tasks to that category of personnel he deemed most efficient within his area of responsibility. Thus, to require the Commission, as presumably appellees would, to define transfer of function as any shift in the performance of a designated task or series of tasks would, to be sure, have chaotic repercussions. It would require the reshuffling of employees each time it was determined that the efficiency of the federal service would be furthered by the shifting of responsibilities from one grade of personnel to another, undoubtedly in many instances frustrating the very purpose underlying the shift. If Congress had intended this result it could have surely provided for it. It was instead cognizant of the fact that the interest of the individual employee would, in each instance, have to be balanced against the needs of the federal service. Accordingly, it selected a broad term, to wit, transfer of function, and left it to the Civil Service Commission as the agency most aware of the particular needs of the employee and of the administrative agency, to strike the appropriate balance. We suggest that if there be any area in which this Court should yield to administrative judgment it is most certainly here. To do otherwise would continually set this Court⁶ up as an arbiter of intra-agency organizational disputes.

⁶ In suits challenging administrative decisions of the Civil Service Commission, the Commissioners themselves are indispensable parties and "[T]he courts of the District of Columbia are the only courts of 'competent jurisdiction, to reach the members of the Civil Service Commission.'" *Blackman v. Guerre*, 342 U.S. 512, 516; *Haine v. Googe*, 188 F. Supp. 627, affirmed, 289 F. 2d 931 (C.A. 2); *Eerber v. Russell*, 200 F. 2d 334 (C.A. 2).

B. EVEN ASSUMING ARGUENDO THAT THERE HAS BEEN A TRANSFER OF FUNCTION APPELLEES WERE PROPERLY SUBJECTED TO A REDUCTION IN FORCE

As we indicate above, the removal of appellees from their positions was the direct result of a nation-wide reorganization of the planning operation within the naval shipyards, in which all of the positions on appellees' competitive level were abolished. There was no need, under the revised program, for a job classification of Analyst and Scheduler. Therefore, all of the appellees were duly served with reduction-in-force notices advising them that all of the positions in their competitive level were being eliminated.⁷

Appellees were reassigned, therefore, simply because there were no longer any jobs on their competitive level to which they could be appointed, no matter how high their retention credits. This is not to say, however, that upon abolition of their job classifications appellees were stripped of their employment rights. For each had retention credits which not only protected him in the event of a partial reduction-in-force, but, where, as here, the entire job classification is abolished, retention points ensured priority in his assignment to another job of equal or lower grade for which he is qualified. Thus, each appellee received an appointment to a position in the highest classifi-

⁷ As we have previously noted, *supra*, pp. 2, 3, prior to the initiation of the reduction in force, the Bureau of Ships arranged for each naval shipyard to conduct a competitive promotion examination for Planner and Estimator, to provide Shop Analyst and Schedulers, and others, with the opportunity to compete for the additional vacancies in this higher level rating required by implementation of the revised Production Planning and Control Program. Also, Shop Analyst and Schedulers were afforded an opportunity to compete for those additional Classification Act positions required in the Production Engineering Division for job standards work. Based on their reduction-in-force placement rights, many Shop Analyst and Schedulers were offered placement as Shop Planners since this rating was needed at the shop level to perform the residue of shop planning remaining in the shops. Remaining Shop Analyst and Schedulers not placed in Planner and Estimator job standards, Shop Planner, or other positions above journeyman level were offered placement in their basic trade rating. No Shop Analyst and Scheduler was involuntarily separated as a direct result of the revisions in the Production Planning and Control Program.

cation within the commuting area for which he was eligible. Appellees are understandably concerned over the salary cuts that they necessarily suffered. But the Department of the Navy plainly had no obligation to keep the Analyst and Schedulers position in existence when the best interests of the agency required its elimination;⁸ its obligation was only to ensure that an employee who thus lost his position was reassigned to a position for which he was qualified at an equal or lower grade.⁹ The record in the instant case plainly establishes that the Navy Department fully complied with its statutory authority in reassigning appellees, and it is obvious that there are presently no positions of

⁸ See *Eamspeck v. Trial Examiner's Conf.*, 345 U.S. 128. As this Court said in *Adams v. Humphrey*, 98 U.S. App. D.C. 40, 232 F. 2d 40: "The creation or abolition of Government jobs, within the scope of the authority given by law to supervisory officials requires primarily a judgment as to the needs of public business. The determination of those needs plainly involves the exercise of discretion * * *."

⁹ The Department of the Navy's Placement, Separation and Reemployment Assistance Instructions provide in pertinent part:

NCPI 170.8-1

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h. Reassignment to vacancies.—No employee is entitled, through reduction in force, to be reassigned to a vacancy. Such reassignments may be made at the discretion of the activity.

i. No right to promotion.—Employees reached for reduction-in-force action may be promoted to vacancies. See *h* above. No employee may be displaced through the promotion of another employee to a position having a higher representative rate.

NCPI 170.8-2

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a. Placement right within the competitive area.—An employee is entitled to a reasonable offer (see *c* below) of reassignment if there is a continuing position in the competitive service in any other competitive level:

(1) for which he is qualified; and

(2) which is occupied by an employee in a lower retention group or subgroup.

See also 5 C.F.R. 20.5(b), (d), *infra*, pp. 27, 28.

the Analyst and Schedulers grade to which they could be appointed¹⁰

Appellees contended that they should have received appointments as Planner and Estimators. However, this would have necessitated the issuance of promotions as the Planner and Estimators were rated at a higher level than the Analyst and Schedulers (a five per cent differential in pay was maintained between the positions) and they were in different competitive levels. See NCPI 170.4-2(a)(2) and NCPI 250.4-6(b), *infra*, pp. 32, 38. And, neither the Veterans' Preference Act nor any of the applicable regulations confer upon appellees an absolute right to the promotion solely on the basis of their retention credits. To the contrary, the Civil Service Regulations providing procedures to be followed in the case of reductions-in-force and reassignment expressly provide that "an agency is not required to fill a vacant position, [or] to change an employee to a position with a higher representative rate" 5 C.F.R. 20.5(d)(3). And this Court has consistently recognized that it " . . . cannot undertake to pass on a plaintiff's qualifications for any given post, or to

¹⁰ When the equivalent of Section 12 of the Veterans' Preference Act was first introduced into the legislative history, its purpose was explained by the Legislative Representative of the Veterans of Foreign Wars as follows (Hearings before House Civil Service Committee on H.R. 5558, H.R. 5821, and H.R. 6497, 75th Congress, p. 119):

"I cannot emphasize too much the importance of the provisions of Section 10 and the importance that it has in changing the present methods and making it impossible to discharge veterans except for good cause shown and to fail to retain veterans so long as there is retention of similar employees in a particular agency, and thus prevent the creation of subdivided separation lists."

Again, at the Hearings before the House Civil Service Committee of the 76th Congress in regard to a similar section in H.R. 5147, he stated (p. 70):

"That section is quite clear and means that no veterans shall be dismissed while nonveterans who are doing the same work are retained; and that no veterans shall be dismissed except for a good cause shown as indicated in section 9."

It is therefore clear that the evil intended to be protected against is not here involved.

compare them with those of an incumbent." *Powell v. Brannan*, 91 U.S. App. D.C. 16, 17, 196 F. 2d 871, 873.¹¹

Of particular applicability here is this Court's opinion in *Cutting v. Higley*, 98 U.S. App. D.C. 288, 235 F. 2d 515, certiorari denied, 352 U.S. 883. Cutting, a veteran's preference eligible, was employed by the Veterans Administration as a Claim's Examiner (GS-7). Subsequent to a reorganization, the position of Claims Examiner was abolished and its duties assigned to the incumbents of the newly created Educational Benefits Specialist's position (GS-8). Cutting argued that selections for the new positions were required to be made on the basis of tenure, preference, length of service, and efficiency ratings and not upon the basis of evaluated qualifications. In rejecting this contention, this Court held that "Section 12 does not apply promotions." *Id.* at 517:

The function of the old Claims Examiner having been abolished, every person in the grade for that position was released from that grade. There were no "competing employees" left in Grade GS-7. There being no Grade 7 positions left in existence, the rights of appellants were to be reassigned to positions for which they were eligible at an equal or lower grade. The thrust of the statute and of the regulations is that no employee can be reduced in pay or grade while a competing employee with lower retention standing is retained in the same competitive level. The rationale of the statute leads to the same result. The purpose is to preserve to preference eligibles the pay and status

¹¹ In the *Powell* case, this Court refused to interfere with a Civil Service Commission determination that appellant, who had been separated in a reduction-in-force and reinstated in a position of lesser responsibility and salary, had no right to appointment to any higher position. Reiterating that in civil service cases the task of the courts is a limited one, this Court stated [91 U.S. App. D.C. at 17, 196 F. 2d at 873]: "It is not within their province to weigh the merits of a person's claim to a Federal job. Congress has established administrative machinery to make these determinations." The Court pointed out that preference of veterans applies only within the competing group, and held that the Civil Service Commission had no obligation to appoint appellant to a new and different position, outside the competing group, which required different qualifications. See also *Elder v. Brannan*, 341 U.S. 277.

which they have, whenever some employees at their competing level are to be released from service or reduced in rank or pay. But this purpose has no application to the selection of employees for promotion to more important duties. [*Ibid.*]

See also *Ramspeck v. Trial Examiners Conf.*, 345 U.S. 128,¹² and *Nash v. Interstate Commerce Commission*, U.S. App. D.C. , 225 F. 2d 42, certiorari denied, 350 U.S. 953.

To be sure, the supervisors of the Naval Shipyards, having no obligation whatever to promote appellees to the newly added Planner and Estimators positions solely on the basis of their retention credits, had the full power—if not in fact the duty—to adopt some method of screening applicants that would be reasonably calculated to secure the best qualified people. That the method they employed was effective in this respect is indisputable. A competitive examination was conducted and all former incumbents of the Analyst and Schedulers position were urged to compete (J.A. 54).¹³ For the Navy to have followed any other

¹² In the *Ramspeck* case, the Supreme Court made clear, *inter alia*, that the question of promotion even to the quasi-judicial positions of trial examiners is a matter for the employing agency and the Civil Service Commission (345 U.S. at 138), and that reductions-in-force “for lack of funds, personnel ceilings, reorganizations, decrease of work, and similar reasons” are similarly within the authority of these agencies (345 U.S. at 142).

¹³ Kenneth Robertson, a former Analyst and Scheduler, testified on behalf of the appellees at the hearing below before the Chief Appeals Examining Officer, as follows (J.A. 54):

THE WITNESS: We felt that if the functions of this job Planning was moved into the P&E our people should have been moved in to do the work. Now, we were given the opportunity by the Bureau of Ships to qualify for this P&E vacancy by the virtue of taking a test for a job that we were already qualified for. The examination was given—the examination given was that for position of analyst and scheduler, not that for a planner and estimator. So, therefore, we took an examination for a job we were already qualified for. Some of our people, through some type of pressures, feeling that they were going out of a job, flunked the examination. So consequently, we have had over 50 percent of our people that flunked out and lost the opportunity of ever going possible to P&E at this stage of the game by virtue of this examination. But

course would surely have necessitated a sacrifice in the proficiency with which the planning function was performed.

Finally, we suggest that even if appellees were transferred prior to the reduction-in-force they would have fared no better. As indicated above (*supra*, p. 22), the rating of Planner and Estimator carried a higher rate of pay than that of Analyst and Scheduler. The Commission's regulations would require, therefore, that the transfer of Shop Analyst and Schedulers be accomplished without a change in the tenure of their appointment. 5 C.F.R. 20.8(a), *infra*, p. 28. Consequently, the two ratings would, in a reduction-in-force, be placed in separate competitive levels, and employees therein would not compete. Shop Analyst and Schedulers having higher relative retention preference would not be entitled to displace Planner and Estimators, since "bumping" rights extend only to positions of the same or lower rating. 5 C.F.R. 20.5(d), *infra*, p. 28. Hence, under the procedure followed, appellees received all that was due them, and nothing can be gained

nevertheless, we feel that if our work is being done over in this other agency there is where our people should have gone with the work to do it.

MR. ELLIS: I wonder if I might ask a question here?

EXAMINER ELLIOTT: Yes.

MR. ELLIS: Actually then, your complaint is that you had to take an examination for the P&E assignment?

THE WITNESS: No, sir. The complaint is not that we had to, we just mention the fact that we did. We were given the opportunity. He asked about the opportunity also.

MR. ELLIS: The P&E job does carry a different rate?

THE WITNESS: Yes.

MR. ELLIS: Would you agree P&E duties generally are somewhat different than those of scheduler and analyst?

THE WITNESS: Would you agree that they are somewhat different?

MR. ELLIS: Yes.

THE WITNESS: Somewhat, but I wouldn't agree to possibly a grade percentage difference.

MR. ELLIS: How long has there been in existence a rate of planner and estimator?

THE WITNESS: A good many years.

MR. ELLIS: Even prior to the time that Production, Planning and Control Board that has been testified to was inaugurated?

THE WITNESS: Yes, sir.

by requiring the Commission to go through the meaningless procedure of transferring the Analyst and Schedulers prior to a reduction-in-force.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the district court should be reversed and the case remanded with instructions to enter judgment for the appellants.

JOSEPH D. GUILFOYLE,
*Acting Assistant Attorney
General,*

DAVID C. ACHESON,
United States Attorney,

SHERMAN L. COHN,
EDWARD BERLIN,
*Attorneys,
Department of Justice,
Washington 25, D. C.*

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APPENDIX

Section 12 of the Veterans' Preference Act, 58 Stat. 390, 5 U.S.C. 861, provides:

In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: *Provided*, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: *Provided further*, That preference employees whose efficiency ratings are "good" or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below "good" shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: *And provided further*, That when any or all of the functions of any agency are transferred to or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions.

The Civil Service Commission's Retention Preference Regulations for use in Reduction in Force provide in pertinent part:

5 C.F.R. 20.5 Actions

• • • • •

(b) *Employees in positions in the competitive service.* (1) No employee may be separated, furloughed for more than thirty (30) days, or reduced in pay or grade in a reduction in force while a competing employee with lower retention standing (and with-

out retention priority based on a statutory retention right) is retained in the same competitive level.

• • • • •

(d) *Reasonable change in position—*

(1) *How determined.* A change between positions is reasonable if the representative rate of one position is the same as the representative rate of the other position; however, if the employee cannot be changed to a position with the same representative rate, a change in position is reasonable if made with the least reduction in representative rate.

• • • • •

(3) *Choice of position.* An agency is not required to give an employee a choice between reasonable changes in position. Any agency is not required to fill a vacant position, to change an employee to a position with a higher representative rate, or to move an employee to a different duty station, but an agency is not prohibited from taking these actions. No employee rendering satisfactory service in a position shall be required to be displaced by a competing employee who is not qualified for such position under the regulations in this part.

• • • • •

5 C.F.R. 20.8 Special regulations relating to consolidations and liquidations.

(a) Before any reduction in force is made in connection with the transfer of any or all of the functions of an agency to another continuing agency, all competing employees in positions identified with such function or functions shall be transferred to such continuing agency, without change in tenure of appointment. Employees whose positions are transferred solely for the purpose of liquidation, and are not identified with operating functions specifically authorized at the time of transfer to continue in operation more than sixty (60) days, shall not be considered as competing employees for other positions in the receiving agency.

The Navy Civilian Personnel Instruction applicable to Reductions in Force provides in pertinent part:

INSTRUCTION 170
REDUCTIONS IN FORCE
SECTION 1, LEGAL BASIS

• • • • •

1-1. **VETERANS' PREFERENCE ACT.**—The Veterans' Preference Act of 1944 (58 Stat. 387; 5 USC 851-869), as amended, is the basic law governing reduction in force. Section 12 of this Act specifically prescribes reduction-in-force criteria. Sections 11 and 19 of the Act authorize and direct the Civil Service Commission to issue and enforce regulations to carry out the provisions, intent and purpose of the Act. Section 19 also provides that agencies must comply with decisions of the Commission. Sections 11, 12 and 19 are quoted in NCPI 170. 11-Encl. 1.

• • • • •

1-3. **CIVIL SERVICE COMMISSION REGULATIONS.**—

Chapter Z1 of the Federal Personnel Manual contains the Civil Service Commission's Regulation 20, the Retention Preference Regulations. The provisions of Regulation 20 have been incorporated in this Instruction.

SECTION 2, GENERAL PROVISIONS

• • • • •

2-2. **General.**—Management decides what positions are necessary, when it is necessary to reduce personnel, and where and how large a reduction to make. The reduction-in-force instructions govern which employees will be affected by reduction in force after these basic determinations have been made by management. A summary of reduction-in-force procedures is as follows:

- a. Competitive areas are established according to primary subdivision of an agency. In the field service each naval activity usually constitutes a competitive area.
- b. Competitive levels, within which employees compete for retention, are established in each competi-

tive area. Positions in a competitive level must be similar enough that interchange of personnel, without undue interruption to work, is feasible.

• • • • •

f. When a reduction in force in any competitive level becomes necessary, employees are reached for action in the order of their subgroup standing and within their subgroup in the order of retention credits.

• • • • •

2.4. DEFINITIONS.—Throughout this Instruction certain words and phrases which have special meaning for reduction-in-force purposes are used. The definitions of these terms are as follows:

• • • • •

c. *Commuting area*.—The geographic area within which people live and can reasonably be expected to travel back and forth to work in the course of their daily employment. In the field service it is determined by the Commandant of the Naval District subject to the concurrence of the appropriate Civil Service Commission regional office. It is based on such factors as distance, availability and adequacy of public transportation facilities, cost of such transportation, and travel time required in going to and from work.

d. *Competitive area*.—The area within which employees compete for retention in employment in reduction in force. A normal competitive area is one complete naval activity under single command within one commuting area. Smaller competitive areas must be approved by the Civil Service Commission in accordance with NCPI 170.4-1. Larger competitive areas may be established by commanding officers upon approval of the cognizant bureau or office (See NCPI 170.4-1).

e. *Competitive level*.—The grouping of positions for initial reduction-in-force competition to determine which employees will be separated from and which will be retained in their positions. All positions, within a competitive area, of such similarity that interchange of personnel is feasible are placed in the same competitive level. See NCPI 170.4-2.

• • • • •

SECTION 4, BASIC FACTORS IN REDUCTION IN FORCE

• • • • •

4-1. COMPETITIVE AREAS.

a. Normal competitive areas.—A normal competitive area is a naval activity as defined below, within which employees are subject to being shifted (re-assigned, promoted and demoted) under single administrative authority. The special patterns of competitive areas listed below have been established by the Navy Department and cleared with the Civil Service Commission.

(1) *Naval activity (departmental service).*—

In the departmental service the following will be considered as naval activities:

• • • • •

(h) Bureau of Ships.

• • • • •

(2) *Naval activity (field service).*—In the field service the following will be considered as naval activities:

(a) Naval District, or River Command, Staff Headquarters.

(b) Naval Shipyard.

b. Special competitive areas.—Special competitive areas, as exceptions to the above established patterns, are approved by the Navy Department and the Civil Service Commission upon adequate justification. After a competitive area has been approved, it shall be adhered to unless reorganization of the activity has affected the original reduction-in-force plan, or the facts upon which the plan was originally based have changed. In such cases recommendation for new areas may be submitted.

• • • • •

(2) *Establishing smaller competitive areas.*

(a) Activities which consider that smaller competitive areas, or other special com-

petitive areas, are essential to the efficient operation of the activity should give due consideration to the following:

1. In general, it is the policy of the Navy Department to make competitive areas as broad as possible, so as to protect the equity of employees to the maximum extent;

• • • • •

4-2. COMPETITIVE LEVELS.—A competitive level consists of all of the positions of one competitive area which are of such similarity as to duties, responsibilities, qualifications required, pay systems and working conditions that interchange of personnel is feasible. The qualifications or sex of the particular incumbents do not establish a basis for separate competitive levels. Generally, graded positions will be of the same occupational title, but this is not necessary if the other tests are met.

a. Specific separate competitive levels.

• • • • •

- (2) Each rating listed in NCPI 250 will be in a different competitive level. Apprentices and mechanics (limited) will be in competitive levels separate from journeymen and by trade or occupation.

• • • • •

**SECTION 8, PLACEMENT, SEPARATION AND
REEMPLOYMENT ASSISTANCE**

• • • • •

i. No right to promotion.—Employees reached for reduction-in-force action may be promoted to vacancies. See *h* above. No employee may be displaced through the promotion of another employee to a position having a higher representative rate.

• • • • •

8-2. PLACEMENT WITHIN THE COMPETITIVE AREA.—

• • • • •

a. Placement right within the competitive area.—An employee is entitled to a reasonable offer of reassign-

ment if there is a continuing position in the competitive service in any other competitive level:

- (1) for which he is qualified; and
- (2) which is occupied by an employee in a lower retention group or subgroup.

.

c. Reasonable offer determination.

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- (4) Choice of position.—An activity is not required to give an employee a choice between reasonable changes in position. An activity is not required to fill a vacancy, or to change an employee to a position with a higher representative rate; an activity is not, however, prohibited from taking these actions.

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8-4. DETERMINING QUALIFICATIONS.—When an employee has received a notification of reduction in force a determination must be made as to his qualification for other positions. There is never any question as to his qualifications for positions in the competitive level from which being separated. In making these determinations the following instructions relating to ability to perform duties, physical fitness, security requirements and eligibility for higher level positions must be observed. These instructions are equally applicable to determinations for reassignment and for entry on the Reemployment Priority List:

a. Ability to perform duties.—Subject to other requirements of this section an employee is considered “qualified” if he is capable of performing the duties of the position. In making this qualification determination the following shall be taken into account:

.

- (2) To be "qualified" he must have the knowledges, skills, techniques, and adaptability required in the position and be capable of assuming and performing acceptably such duties without training in the basic fundamentals of the position.

SECTION 9, PROCEDURES FOR SPECIAL CIRCUMSTANCES

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9.4. TRANSFER OF FUNCTIONS.—The term service as used herein shall include each military department of the Department of Defense and the Office of the Secretary of Defense.

a. From or to another Federal agency, service of the Department of Defense or naval activity.—When functions are transferred from one location to another all of the Retention Group I, II and III employees involved shall be transferred with the functions. The same action shall be taken whether the transfer is between Federal agencies, services of the Department of Defense or naval activities. The tenure of employees transferred shall not be changed regardless of whether they are in a duty or nonduty, pay or nonpay status.

b. Policy.—The policy outlined in (1) through (4) below was established by the Department of Defense for the purpose of assuring equitable and uniform treatment of employees when functions to which they were assigned are transferred from one service of the Department of Defense to another, or from one naval activity to another. The same criteria shall apply when functions are transferred to a different location within the same activity. They will apply also to similar actions involving transfer from or to another Government agency when not inconsistent with any provision of law or agreement relating to a particular transfer or consolidation:

- (1) The work being performed by one service or naval activity is to be taken over by an-

other service or naval activity. This will be considered a transfer of function if there is reasonable expectation that the work being transferred will continue for more than 60 days.

- (2) The work of one service or naval activity is simply being cancelled and no corresponding function is being assumed by another service or naval activity. This will result in a reduction in force solely by the service or naval activity whose work is cancelled.
- (3) A combination of transfer of some continuing functions and a cancellation to be taken will depend upon the separability of the two groups of functions. When it is not possible to differentiate between personnel working on that portion of the work subject to reduction in force due to cancellation of work and that portion being transferred, the entire action will be handled as a transfer of function.
- (4) One service or naval activity is transferring real property to another service or naval activity, but not the work being performed on that property. The work of the employees directly engaged in the custody and maintenance of the real property will be considered to have been transferred to the receiving service. Employees other than those directly and primarily engaged in the custody, protection and maintenance of the real property do not have regulatory rights to consideration for transfer. However, to the maximum extent possible in hiring to meet its requirements, the gaining service will give priority consideration to the employees of the losing service.

c. Identifying positions with transfer of functions.—
It is necessary to make a determination as to which,

if any, positions or units are identifiable with work that is to be transferred to a different location. This determination must be made whether the work is being transferred to a different location within the activity, to another naval activity or to a different service in the Department of Defense. Transfers between activities or services should be made by, or with the concurrence of the Bureaus concerned. Should management bureaus or offices concerned fail to reach agreement, the case will be forwarded to the Assistant Secretary of the Navy (Personnel and Reserve Forces) for final resolution. The determination should be made sufficiently in advance to meet notice requirements of any related reduction-in-force action or separation of employees who decline offer to move with their functions. The following criteria in addition to those outlined in *b* above will be used to make the determination:

- (1) Certain duties of one or more positions are to be transferred while the unit performing the functions to be transferred will remain intact to perform remaining functions. If the majority of the duties of a position are to be transferred to another service or naval activity, the incumbent will be identified with the transfer of functions. However, if grade-controlling duties are involved the employee's rights will be based on the location of the higher grade duties rather than the majority of duties.
- (2) Employees whose positions are being abolished because the function is being transferred to another Service or naval activity enjoy transfer of function rights even though no additional personnel are required by the Service or activity acquiring the function.
- (3) When the majority of an employee's duties are being transferred to more than one loca-

tion his transfer or function rights are dependent upon the planned location of the largest portion of his duties unless grade-controlling duties are involved (see (1) above). If a determination cannot be made as to which activity will receive a majority of the duties (or grade-controlling duties) the employee will be identified with one of the activities by administrative determination.

- (4) An employee providing service or support to an organization being transferred is to be identified with the transfer of functions if it is determined that more than half of his duties are devoted to the organization being transferred. For example, a Public Works Laborer Cleaner is assigned to clean offices in a Division of another Department that is being transferred. The Laborer Cleaner would be identified with the transfer.



• military department has an installation in an area, surveys are conducted jointly or data collected by one department may be used as a common basis for adjustment of rates. Where the Bureau of Labor Statistics is surveying wages in an area, the Navy may survey jointly with BLS or use data collected by BLS as a basis for adjusting Navy rates. When naval activities request new ratings they may recommend rates of pay, but surveys of private employers shall not be made for this purpose unless the Office of Industrial Relations directs such a survey.

d. Procedures.--General and specific procedures for conducting wage surveys are issued by OIR from time to time. These vary from area to area depending on who is conducting the survey and whether other military departments or BLS are involved. NAVEXOS P-1417, "Policies and Procedures for Wage Fixing" contains the Navy's basic policies and procedures governing the fixing of wages for its ungraded employees. When an Area Wage Survey Committee is convened, detailed instructions are provided through the local AWCO.

e. Analysis and evaluation of survey data.--Data collected through wage surveys are forwarded in prescribed report form to OIR where they are analyzed and evaluated. Resulting wage schedules are submitted by OIR to the Assistant Secretary of the Navy (Personnel and Reserve Forces) for final approval. Where specifically authorized by the Secretary of the Navy, the Chief of Industrial Relations may approve wage schedules. When appropriate under established procedure, tentative wage schedules are submitted to the Navy Wage Committee for review and recommendation before submittal to the AsstSecNavPers.

4-5. EMPLOYEE PARTICIPATION.--

The Navy appreciates the interest of its employees in matters relating to their pay and recognizes the value of the contributions they can make in developing wage policies and conducting wage surveys, and will continue to seek the benefits which accrue from keeping its

employees informed on wage matters. Every reasonable opportunity will be afforded employees to advise, and full consideration will be given to employees' comments, suggestions, and recommendations in the development of wage policy. Opportunity will be provided for employees to advise and submit information in the development of wage schedules both at the local level and at the Washington level. Employees participating in wage surveys will be selected on the basis of their qualifications to assist in collecting local wage data without reference to affiliation or nonaffiliation with any organization.

4-6. WAGE FORMULAS AND NCPI-SCHEDULED RATES.

a. Relation of this paragraph to schedules of wages.--Because wages vary from area to area, schedules of wages are the usual media for specifying rates. There are some ratings, however, for which rates are constant in many areas (examples: Master Mechanic and Foreman Mechanic). There are other ratings for which activities derive the rates by applying prescribed formulas to basic data provided by schedules of wages (examples: Quartermaster and Leadingman). To reduce the information which must be provided in individual schedules of wages, such rates and formulas are listed below. In the exceptions where such common rates and formulas do not apply, appropriate entries are made in area and activity schedules of wages. Such deviations occur most frequently in overseas areas, particularly in schedules applicable to positions occupied by employees indigenous to such areas.

b. Table of formulas and rates.--Activities authorized to use any of the ratings indicated by the following table shall apply to such ratings the rates indicated by the table, unless contrary provisions appear in an applicable schedule of wages, in which case the provisions of the schedule of wages shall prevail. Ranges of three steps, as explained in paragraph 4-2a hereof, apply to all cases not specified otherwise.

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WAGE SCHEDING AND UNGRADED RATING DETERMINATION

NCPI 250.4-6

Rating	Wage Formula or Schedule of Rates
Master Mechanic (All categories)	Continental U.S. and Hawaii (annual step rates): \$11,606.40 \$12,084.80 \$12,563.20 Outside U.S.: The above rates apply to U.S. citizens in Master Mechanic positions paid under schedules of wages established for non-locally-hired (continental) U.S. citizens, unless the area schedule of wages provides higher rates.
Foreman Mechanic (All categories)	Continental U.S. and Hawaii (annual step rates): \$9,443.20 \$9,832.40 \$10,233.60 Outside U.S.: The above rates apply to U.S. citizens in Foreman Mechanic positions paid under schedules of wages established for non-locally-hired (continental) U.S. citizens, unless the area schedule of wages provides higher rates.
Chief Pilot	Continental U.S. and Hawaii (annual step rates): \$10,337.00 \$10,774.40 \$11,211.80 Outside U.S.: See area schedule of wages.
Pilot	Continental U.S. and Hawaii (annual step rates): \$8,753.20 \$10,171.20 \$10,587.20 Outside U.S.: See area schedule of wages.
Chief Quartermaster (All categories) Chief Shop Analyst And Scheduler	2nd step rate equals (a) 2nd step rate for rating concerned (NCPI 250.1-2) plus area differential for supervisory level 3, or (b) area floor rate for supervisory level 3, whichever is higher. 1/ 2/ 3/ 4/
Senior Supervisory Inspector Senior Supervisory Aircraft Examiner	2nd step rate equals 2nd step rate for "base level" (see NCPI 250.4-Encl. 11) plus area differential for supervisory level 3. 1/ 2/ 3/
Quartermaster (All categories) Sr. Shop Analyst And Scheduler Supervisory Production Controlman	2nd step rate equals (a) 2nd step rate for rating concerned (NCPI 250.1-2) plus area differential for supervisory level 4, or (b) area floor rate for supervisory level 4, whichever is higher. 1/ 2/ 3/ 4/
Supervisory Planner And Estimator Supervisory Progressman Supervisory Ship Scheduler Supervisory Ship Progressman Supervisory Ship Surveyor	2nd step rate equals 2nd step rate for LH&M Pay Level 11 plus area differential for supervisory level 4. 1/ 2/

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Supervisory Aircraft Examiner Supervisory Estimator Supervisory Inspector	2nd step rate equals 2nd step rate for "base level" (see NCPI 250.6-Encl. 11) plus area differential for supervisory level 4. $\frac{1}{2} \frac{3}{4}$
Leadingman (All categories) Sr. Production Controlman Sr. Operations Analyst	2nd step rate equals (a) 2nd step rate for rating concerned (NCPI 250.1-2) plus area differential for supervisory level 3, or (b) area floor rate for supervisory level 3, whichever is higher. $\frac{1}{2} \frac{3}{4}$
Associate Supervisory Aircraft Examiner Associate Supervisory Estimator Associate Supervisory Inspector	2nd step rate equals 2nd step rate for "base level" (see NCPI 250.6-Encl. 11) plus area differential for supervisory level 3. $\frac{1}{2} \frac{3}{4}$
Chief Ferry Master <i>Chief Motorboat Captain</i>	2nd step rate equals 2nd step rate for LH&M Pay Level 11 plus area differential for supervisory level 3. $\frac{1}{2}$
Planner And Estimator Progressman Ship Progressman Ship Scheduler Ship Surveyor	2nd step rate equals 2nd step rate for LH&M Pay Level 11 plus area differential for supervisory level 3. $\frac{1}{2}$
Maintenance Scheduler	2nd step rate equals 120 per cent of 2nd step rate for LH&M Pay Level 11. Round mills to the nearest cent. $\frac{1}{4}$
Shop Analyst and Scheduler	2nd step rate equals 2nd step rate for rating concerned (NCPI 250.1-2) plus 20 per cent of the 2nd step rate for LH&M Pay Level 11. Round mills to the nearest cent. $\frac{1}{4}$
Head (All categories)	2nd step rate equals 2nd step rate for rating concerned (NCPI 250.1-2) plus area differential for supervisory level 2a. $\frac{1}{2} \frac{3}{4}$
Ferry Master Tug Master	2nd step rate equals 2nd step rate for LH&M Pay Level 11 plus area differential for supervisory level 2a. $\frac{1}{2}$
Chief Barge Captain	2nd step rate equals 2nd step rate for LH&M Pay Level 4 plus area differential for supervisory level 2a. $\frac{1}{2}$
Shop Planner Production Controlman Operations Analyst Assistant Planner and Estimator	2nd step rate equals 2nd step rate for rating concerned (NCPI 250.1-2) plus area differential for supervisory level 2a. $\frac{1}{3} \frac{3}{4}$
Shop Planner (Printing)	2nd step rate equals 2nd step rate for P&L Service (Field) Pay Level 16 plus area differential for supervisory level 2a. $\frac{1}{3}$

WAGE FIXING AND UNGRADED RATING DETERMINATION

NCPI 250.4-6b

Trackman	2nd step rate equals 2nd step for LH&M Service Pay Level 3 plus area differential for supervisory level 2a. $\frac{1}{2}$
Assistant Production Controlman	2nd step rate equals 2nd step rate for rating concerned (NCPI 250.1-2) plus eight per cent of 2nd step for LH&M Pay Level 11. This eight per cent figure to be used is the differential for supervisory level 2b, applied, however, to find the 2nd step of a range rather than to a 3rd step to find a single rate. $\frac{1}{2}$ $\frac{4}{5}$
Diver	Single rate for Diver equals 175 per cent of 2nd step rate for LH&M Pay Level 11. Round mills to the nearest cent. If five mills, round to the next higher cent.
Mechanic (Limited)	2nd step rate equals midpoint between 2nd step rates for Helper and the associated journeyman rating. Round all fractions to the next higher cent. $\frac{1}{2}$
Apprentice (First Class) Apprentice Printer (First Class)	LH&M Pay Level 8 but paid at single rate equal to 2nd step rate for that level.
Apprentice (Second Class) Apprentice Printer (Second Class) Trainee (Third Year)	Single rate equals 2nd step rate for LH&M Pay Level 8 minus 18¢.
Apprentice (Third Class) Apprentice Printer (Third Class) Student Shop Trainee (First Class) Trainee (Second Year)	Single rate equals 2nd step rate for LH&M Pay Level 8 minus 32¢.
Apprentice (Fourth Class) Apprentice Printer (Fourth Class) Student Shop Trainee (Second Class) Student Trainee Trainee (First Year)	Single rate equals 2nd step rate for LH&M Pay Level 8 minus 48¢.

NOTES:

- 1/ Determine 1st and 3rd step rates from NCPI 250.6-Encl. 15.
- 2/ Convert to annual step rates by multiplying hourly rates by 2080.
- 3/ Area differential for Laborer, Helper, and Mechanic Service applies to other Services also unless differentials for the other Services are specifically authorized in the area wage schedule. Floor rates apply to LH&M Service only.
- 4/ The "rating concerned" is generally shown as a trade designator in the authorized title. For example, Electrician is the "rating concerned" for Chief Shop Analyst and Scheduler (Electrician).

29 September 1959
C. S. 628



BRIEF FOR APPELLEES

In The
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17216

ROBERT S. McNAMARA, Secretary of Defense, et al.,
Appellants

v.

JOSEPH W. DICK, et al., *Appellees*

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
United States Court of Appeals _____
for the District of Columbia Circuit

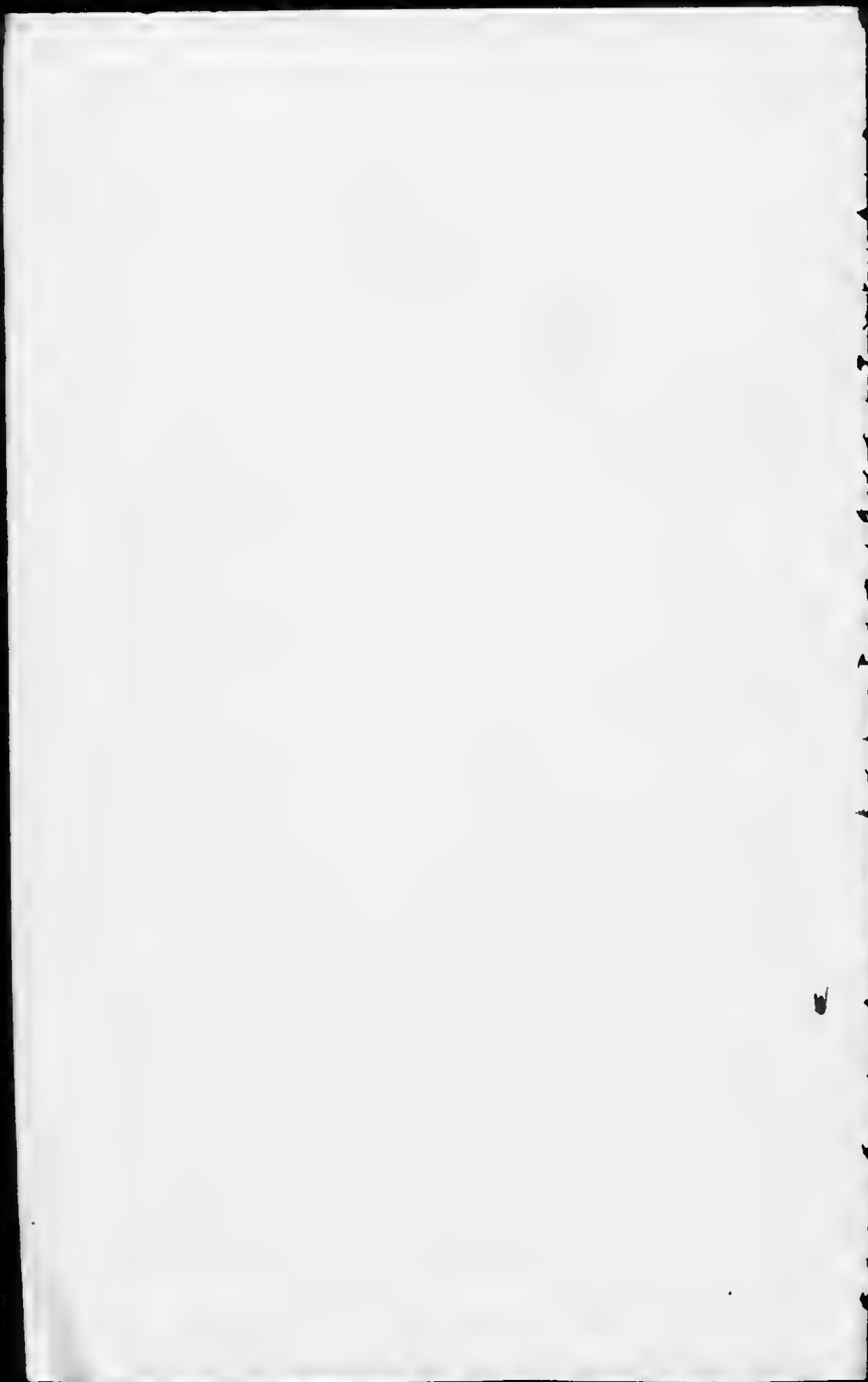
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DONALD M. MURTHA
Attorney for Appellees
1009 Tower Building
Washington 5, D. C.

James A. ...

CLERK

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STATEMENT OF QUESTIONS PRESENTED

In the opinion of the Appellees the questions presented are:

1. Whether on the undisputed facts, the determination of the District Court that the series of activities which were performed by A&S constituted a "function" within the meaning of the third proviso of Section 12 of the Veterans Preference Act must stand where it is supported by:

A. Unambiguous statutory language.

B. Specifically supporting legislative history.

C. Expressly applicable regulations of the Civil Service Commission and the Department of the Navy in effect at the time of the alleged unlawful action.

2. Whether an "interpretation" of a statutory word can be given retroactive effect in any case and particularly where

A. The interpretation is new and the statute is 16 years old.

B. The "interpretation" is ambiguous, inconsistent and unlawful on its face and is discriminatory and would frustrate the purpose of the statute.

3. Whether the Court can be asked to rule on matters upon which the Commission refused to rule and which were not raised in the Court below.

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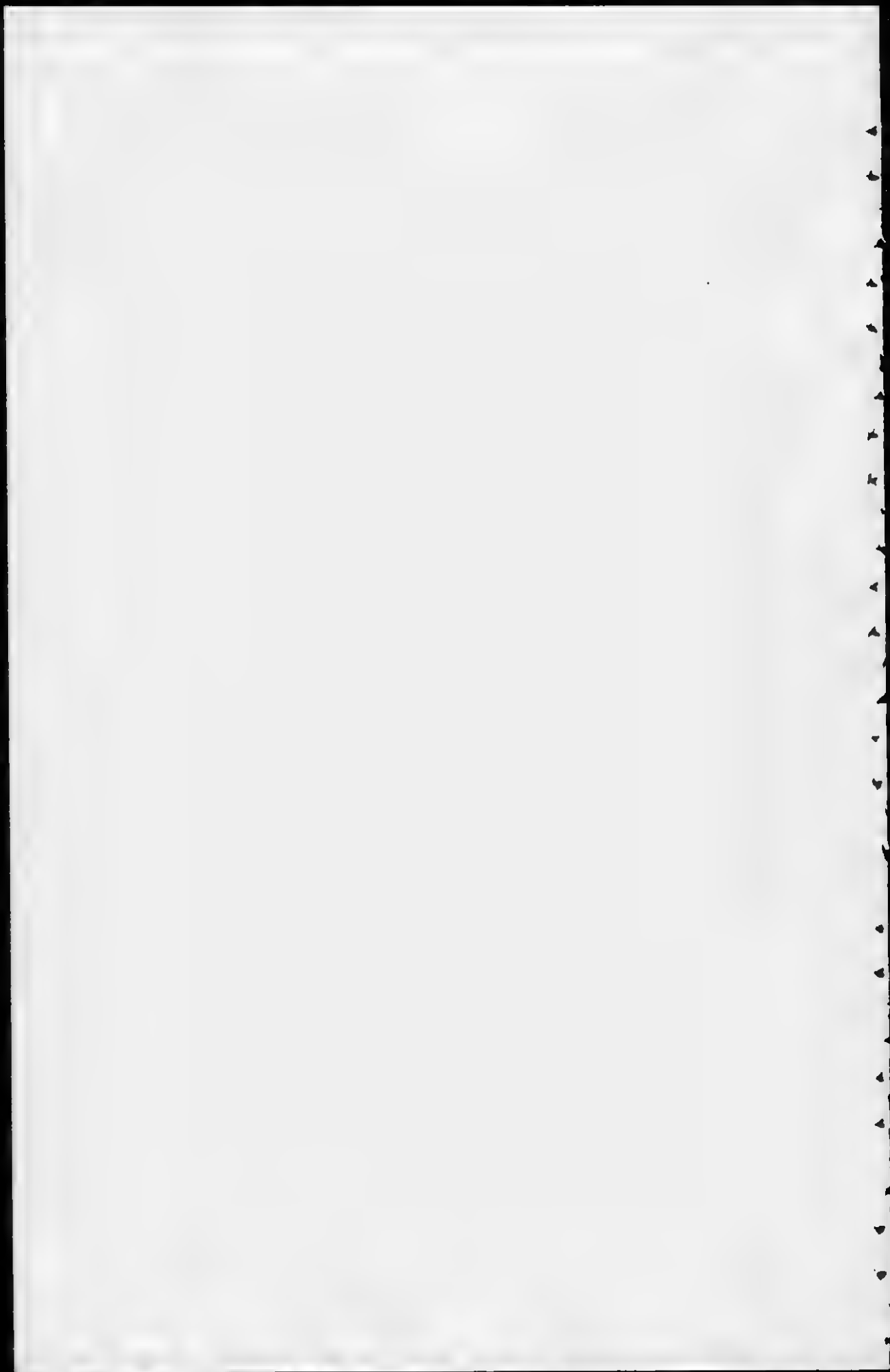
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,216

ROBERT S. McNAMARA, Secretary of Defense, et al.,
Appellants

v.

JOSEPH W. DICK, et al., *Appellees*

**ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

1. Introduction.

A dispute arose in November 1959 between the Department of the Navy and several hundred employees known as Shop Analysts and Schedulers employed in the Production Department at each of the Naval Shipyards. The dispute arose because the functions being performed by these employees were transferred to a different department in a different location of the Shipyards and additional employees were acquired at the new location to perform the

additional work. The entire rating of the Analysts and Schedulers was abolished, transfer rights were denied, and they were all reached in a reduction of force.

The Department of the Navy and the National Association of Naval Shop Analysts and Schedulers with the approval of the Civil Service Commission agreed, May 1960, to present the question of transfer of functions in a pilot case binding on the Navy and on all of the Analysts and Schedulers throughout the eleven Naval Shipyards. (J.A. 13).

The Analysts and Schedulers (hereinafter referred to as A&S) took the position that under Section 12 of the Veterans Preference Act, the Navy was required to transfer the A&S employees together with the function they were performing before any reduction in force was processed.

On appeal to the Civil Service Commission, it was determined that the statutory term "function" did not encompass the scope of the duties performed by A&S. The employees in A&S sought a declaratory judgment in the District Court determining that they were engaged in a function within the statutory language and the regulations of the Civil Service Commission and the Department of the Navy which were in effect at the time the A&S functions were transferred to the Planning and Estimating Division (hereinafter referred to as P&E). The District Court found that the A&S employees were engaged in a function and that the function was transferred to P&E. Consequently, by operation of law the Reduction in Force procedures could not take place prior to the transfer of the employees to P&E. It is essential therefore that the facts as to the nature of the work performed by A&S and its transfer be fully stated.

2. The creation, purpose and nature of the function performed by the Shop Analysts and Schedulers.

There are eleven naval shipyards located along the Pacific and Atlantic coasts. Navy ships come to the ship-

yards for conversion, repair or alteration. The shipyard is divided into departments. The Production Department includes the shops each of which is a separate building physically separated from the Administration activities. There are usually about 17 shops e.g. electrical, paint, woodwork, sheet metal work, structural, etc. The number of employees in each shop may run from 60 to 3000 in a large structural shop (J.A. 13, 94). A new program was inaugurated during 1950 culminating in a formal statement of program known as NAVSHIPS 250-740-3 under date of June 1951 (J.A. 154). The new Production Control System was developed around the findings of the private management engineering firm of Cresap, McCormick and Paget which it had obtained during its survey in 1949 (J.A. 13, 155). "The ultimate objective" of the Program was "to increase productivity by utilizing the latest production control techniques . . . " (J.A. 155) based on the study "this group concluded the only possible way to obtain the optimum degree of control considered necessary was to provide for a more detailed breakdown of work at the shop level utilizing the shop planners' training to analyze the best shop methods." (J.A. 156).

Twenty-two hundred carefully selected employees from the shops were given special training to perform the new duties under the program (J.A. 13) and a special rating was established, known as "Shop Analysts and Schedulers" with a 20% differential in pay over shop rates.

Under the PP&C Program the *Planning Department* was responsible for authorizing "what" was to be done and the *Production Department* was responsible for determining "how" and "when." (J.A. 13, 14, 157). This was a new program the essential part of which was job analysis and the program did not exist before 1950. (J.A. 14).

The Planners and Estimators were to define "scope of work" by indicating in general terms "what" was to be done, e.g. "paint," "repair," "install," etc. (J.A. 157).

The Shop Analysts and Schedulers were to serve in a staff capacity to the Master Mechanic in the Shops and

"They are responsible for breaking jobs down operationally for the purpose of developing standard operational estimating data, developing and standardizing best methods of doing the work, scheduling operationally, progressing the work, maintaining workload charts, determining assist and/or service trade requirements, and in general providing for better control over a shop's productive efforts." (J.A. 157).

The Shop Analysts and Schedulers were physically located in the shops which were one-half to a mile distant from the administration buildings which housed P&E.

Of the planning Dollar the Shop Analysts and Schedulers represented 51.7% or \$17,239,600; the Planners and Estimators 22.2% or \$7,400,000. (J.A. 14, 109).

3. The transfer of functions to P&E.

By order of the Chief of the Bureau of Ships November 17, 1959, the classification of Shop Analysts and Schedulers was abolished and a reduction in force for all in that classification was effected (J.A. 14).

The function of the Analysts and Schedulers known as "preparation of line item job process cards" was given over to P&E. (J.A. 14). Ninety percent of the time of the Analysts and Schedulers had been devoted to this activity. (J.A. 15, 92).

After reorganization the staff of P&E was augmented by as much as 50% by transferring or detailing Analysts and Schedulers, to perform the job process work or to train P&E to perform it. (J.A. 15).

In sample testimony at the Civil Service hearing, testimony showed that of 15 persons in one section of P&E, after reorganization, eleven were former Analysts and Schedulers and 85% of their time after reorganization was spent in doing the same work as they had performed in the Production Department before reorganization. (J.A. 15). At Philadelphia the staff of approximately 100 at P&E was augmented by 69 Analysts and Schedulers on a permanent or temporary basis. (J.A. 15).

It is conceded by the Navy and accepted by the Examiner that the preparation of job process cards by the Analysts and Schedulers was a "big new thing," that it was substantial, that there was a larger staff in A&S than in P&E before reorganization, that P&E is now augmented and that this work of the A&S was transferred to P&E (J.A. 15, 71, 72).

P&E since reorganization has appointed additional employees to perform the work transferred to P&E from A&S. (J.A. 15). The employees who had been performing the work were not transferred with the function they had been performing.¹

STATUTES AND REGULATIONS INVOLVED

Section 12 of the Veterans' Preference Act, 58 Stat. 390, 5 U.S.C. 861, provides:

In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: *Provided*, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: *Provided further*, That preference employees whose efficiency ratings are "good" or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below "good" shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: *And provided further*. That when any or all of the functions of any agency are transferred to or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency,

¹ Statement of facts settled under rule 9 (h) of District Court for the District of Columbia (J.A. 10-16).

or agencies, shall appoint additional employees from any other source for such positions.

5 C.F.R. 20.8 Special regulations relating to consolidations and liquidations.

(a) Before any reduction in force is made in connection with the transfer of any or all of the functions of an agency to another continuing agency, all competing employees in positions identified with such function or functions shall be transferred to such continuing agency, without change in tenure of appointment. Employees whose positions are transferred solely for the purpose of liquidation, and are not identified with operating functions specifically authorized at the time of transfer to continue in operation more than sixty (60) days, shall not be considered as competing employees for other positions in the receiving agency.

SUMMARY OF ARGUMENT

I

A. For 16 years following the passage of the Veterans Preference Act in 1944, and until 10 months following the transfer of function here complained of the Civil Service Commission had never found it necessary to publish any interpretation or definition of the term "function." The Navy Department, however, had in effect at the time this cause of action arose detailed Reduction in Force Regulations giving the term "function" the ordinary meaning of duties, job or work. These regulations are binding on the appellants, for the Supreme Court has determined that Departmental regulations establishing rights for employees must be complied with. *Service v. Dulles*, 354 US 363; *Watson v. US*, 355 US 23. Furthermore, the Civil Service Commission by Departmental Circular implemented the Supreme Court's decisions by providing that employees might apply to the Commission to enforce these rights. Departmental Circular No. 1019, September 18, 1959. (infra p. 35)

The District Court, having before it the clear words of the statute and the regulations of the Department and the uncontroverted facts, found that the appellees were engaged in a function and that the function had been transferred.

It was on this basis that the Motion of the plaintiff was granted. The decision was clearly correct as a matter of fact and of law and must stand. Rule 52, Federal Rules of Civil Procedure. The Court was acting within the scope of its powers in reviewing and setting aside a personnel action which substantially departed from the applicable law and procedures. *Ritter v. Strauss*, 261 F2d 767, 104 U.S. App. D. C. 301.

B. As a matter of fact a transfer of functions did take place. A clearly defined activity of a substantial nature was transferred physically from one location to another within the Navy activity. Furthermore, it was necessary in order to perform the transferred activities for the number of employees at the new location to be increased. The Navy's records clearly identify A&S as separate and distinct from P&E by outlining the different activities each performed and by showing a budget of \$17,000,000 for A&S and \$7,000,000 for P&E and by showing 2200 employees for A&S against 1200 for P&E. The new location of A&S duties at P&E required an increase in personnel of 50% or more. Before P&E could undertake the line item job breakdown and related activities it was necessary for large numbers of A&S employees to be assigned to P&E to instruct them. Under these circumstances a transfer of function took place and it was in direct violation of the statute for the Navy to run a reduction in force resulting in the abolition of all of A&S where the law required the transfer of A&S employees with the transferred functions prior to any reduction in force.

C. The thrust of the Navy's position before the Civil Service Commission, the District Court and this Court is that the term "function" is not to be given its ordinary meaning but a special meaning devised during the course of these proceedings. The Appellants define "function" as "mission" and assert that if a series of activities can be said to be a part of an "overall mission" then it is not a "function" but a part of a "function." Appellants also say that if identical or closely related functions are merged, then a transfer of "function" does not take place.

Appellants do not argue that this is logical or reasonable but simply that the court must adopt whatever interpretation the Appellants place on the term "function."

Appellees insist: (A) that the word "function" as it appears in Section 12 of the Veterans Preference Act having been selected by Congress to express its intent must be given its regular ordinary meaning. *Addison v. Holly Hill*, 322 US 607, 18, 64 S.Ct. 1215, 1221. (B) that the Civil Service Commission had not published in November, 1959, when this course of action arose, any definition of the term "function" so that its new definition even if appropriate cannot be applied retroactively; and that (C) the Navy cannot escape commitment to its regulations current in November 1959, by scrapping them in August 1960 after the Appellees had protested the failure of the Navy to comply with its own regulations as well as the clear statutory language.

While it is true that longheld consistent interpretations by an agency of the laws it administers may be given great weight, it is conversely true that hastily supplied interpretations running contrary to unambiguous statutory language are neither binding on the court nor of much aid in interpreting statutes even in situations where aid was necessary for the construction of a statute. 89 *Led* 124, 129. *Lukens Steel Co. v. Perkins*, 70 App. D. C. 354, 107 F2d 627 (Reversed on other grounds—301 US 113). *Sandfords Estate v. Comm. of Internal Revenue*, 308 US 39, 51, 52, 84 *Led* 20, 26, 27.

II

Appellants may not present new grounds in the appellate court which were not raised or considered in the administrative and judicial proceedings below. *American Export and Import v. O'Neill*, 221 F2d 829, 831, 95 US App. D. C. 274; *Helvering v. Wood*, 309 US 344, 348, 349, 84 *Led* 796, 799.

A. The position of Appellants that a transfer may not take place within an "area of competition" created an exemption not provided by Congress in the third proviso of

Section 12 and also is inapplicable because it was arrived at after the fact and it cannot be given retroactive effect. *Miller v. U.S.*, 294 U.S. 435, 439, 440, 79 L ed 977, 980, 981.

B. The final contention of the Appellants is that even if the law had been complied with, the Appellees would not have benefitted. Appellees deny this and the Appellants have not advanced any lawful precedent which would require this Court to undertake in the abstract a consideration of what might have happened if the Appellants had complied with the law. The sole question is whether the procedure was defective. If so, the Appellants are now charged with correcting its error. Furthermore, this Court has determined that the third proviso must be complied with without regard to administrative difficulty or whether a position of precisely like status and pay is available. *Feldman v. Herter*, 107 U.S. App. D.C. 239, 276 F2d 485.

ARGUMENT

The law requires that employees be transferred with their function and that only after such transfer, if reduction is found necessary, can a reduction in force take place. Consequently, the issue in this case is whether there was a "transfer of function" within the meaning of the third proviso of Section 12 of the Veterans Preference Act. If such a transfer of function occurred, then the reduction in force proceedings were invalid per se and the appellants are responsible for substantial procedural error which has adversely affected the appellees.

It is conceded that the major portion of the duties of analysts and schedulers was transferred to P&E. *So the only question before the Court is whether these duties constituted a "function" within the meaning of the third proviso of Section 12 of the Veterans Preference Act of 1944.* If the duties constituted a function, then the reduction in force action, which was concededly carried out *before* (and in fact without) the transfer of the employees with the function, was in direct violation of the statute and the

regulations in effect at that time. The District Court, finding that the appellees were engaged in a function and that the function was transferred, granted appellees' motion for judgment vitiating the reduction in force action which had reached each member of A&S.

Appellees stress that the meaning of "function" is the only issue because the appellants, in their brief, go far beyond this question and ask for rulings on "interpretations" issued after the transfer of function and for rulings on new matter and hypothetical problems for which there is no support in the record and as to which the Civil Service Commission specifically refused to form a judgment.

In Part I Appellees consider the sole question relating to function. In Part II, although objecting to the introduction of the new matter, Appellees show that it is either unlawful or not material to any issue in this case.

I

THE DISTRICT COURT DECISION THAT THE REDUCTION IN FORCE WAS UNLAWFUL IS FULLY SUPPORTED BY THE LAW AND THE FACTS

A. The Reduction in Force Was in Direct Conflict With the Statute and the Applicable Regulations of the Navy Department and the Civil Service Commission.

The movement, initiated by the Order of November, 1959, of the major part of the tasks performed by some 2,000 Analysts and Schedulers with a budget of over \$17,000,000 from the Production Department to the Planning Department without transferring the employees was in direct conflict with the statute and effective current regulations.

The conflict existed because the law required that the employees be moved with their functions before any reduction in force took place. It is admitted that after the transfer, the staff of P&E was augmented in order to perform the additional functions. (*supra* p. 5).

The language of the third proviso in Section 12 of the Veterans Preference Act of 1944 is simple and concise:

"*And provided further, That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions.*" (5/USC 861)

The Regulations of the Civil Service Commission, unchanged since 1944,¹ were equally explicit:

"Section 20.8 *Special regulations relating to consolidation and liquidations.* (a) Before any reduction in force is made in connection with the transfer of any or all of the functions of any agency to another continuing agency, all competing employees in positions identified with such function or functions shall be transferred to such continuing agency, without change in tenure of appointment."

Implementing the regulation of the Civil Service Commission on January 12, 1954, issued Departmental Circular No. 740 (J.A. 138) in which as Appellants point out (footnote p. 9 Appellants Brief) the right of transfer was extended to include transfers within an agency. In this Circular the Commission explains how this principle is to be applied (J.A. 139):

"The applicability of Section 20.8 (a) depends upon a judgment as to whether, in conjunction with a reduction in force, a function or functions of one organizational entity can be identified as having been transferred to another organizational entity. If such is found to be the case, *the incumbent* or incumbents of positions engaged in the transferred functions must be given the opportunity to follow the functions prior to any reduction-in-force action which might otherwise affect them." (Emphasis added).

The operation of the principle is further illustrated by an example identical with the facts in this case set out in p. 3 of Circular No. 740 (J.A. 140, 141):

¹ See 5 C.F.R. 1944 Supp. Section 12.306.

EXAMPLE A: All the functions of Section X in Division Y in a Federal Department are being transferred to Division Z in the same Department. Division Y and Division Z are both in the same commuting area, Section X is composed of 100 employees, but after the transfer of functions there will be fifty surplus positions in Division Z.

Step 1—Any employees in Section X who will otherwise be involuntarily separated or demoted must be offered the opportunity to follow the functions. Employees who do not accept may be separated under Part 9 or Part 22 of the Commission's Regulations.

Step 2—A reduction in force situation exists in Division Z and the Retention Preference Regulations relating to reduction in force must be applied. Employees reached for separation or demotion have reassignments and retreat rights as employees of Division Z. Separated career employees are placed on the reemployment priority list and receive full benefits of the program for separated career employees (displacement, priority referral, and priority certification).

The Navy having abolished the rating entirely, all of the Analysts and Schedulers were affected and entitled to follow the function from the Production Department to the Planning Department.

Complying with the Commission's instructions, the Navy adopted provisions of the Naval Civilian Personnel Instructions (hereinafter referred to as NCPI) governing transfers of functions. The regulations set forth in the NCPI 170. 9-4 (Appendix Appls. Brief p. 34) provide specifically for transfers to a *different location within the same activity*. A Shipyard is a naval activity NCPI 170. 4-1(2) (b) Appendix Appls. Bf. p. 31). These regulations apply the term "function" in its ordinary sense. In the paragraphs which make up 170. 9-4 "function" is correlated with the terms "work being performed," "work being transferred," "the work of the employees," "duties of a position." (170.9-4b and c. The term "transfer" is also used interchangeably with "consolidation" (170.9-4b. The Civil Service Commission also uses the connotation of "con-

solidation" when it prescribes procedures for "transfer of functions," (20.8 supra) and includes within the scope of this section all employees "in positions identified with the function or functions."

The appellees very properly protested the failure of the Navy to transfer A&S to P&E before any reduction in force took place for the personnel action was unlawful.¹ The Supreme Court has determined that employees have a right to the protection of personnel regulations of the departments in which they are employed *Service v. Dulles*, 354 U.S. 363, 372; *Watson v. U.S.*, 355 U.S. 23.² The Civil Service Commission has issued a directive to this effect. Dept. Circ. No. 1019, Sept. 18, 1959. (infra p. 35). This is implemented by the Navy in NCPI 170.10-2(a) (15), which states:

"(15) Violation of Navy procedural regulations in reduction in force. Such appeal may be the sole basis for the appeal or may be made in conjunction with an alleged violation of Commission regulations. See NCPI 170.10-3b(7).

This Court has time and again with respect to the Veterans Preference Act decided that a District Court may review acts of agencies and the Civil Service Commission which are "violative of the law and the applicable regulations." *Ritter v. Strauss*, 261 F2d 767, 104 U.S. App. D.C. 301. *Feldman v. Herter*, 276 F2d 485, 107 U.S. App. D.C. 239. *Kinter v. Toll*, 276 F2d 486. *Powell v. Brannan*, 91 U.S. App. D. C. 16, 196 F2d 871. And the Supreme Court has ruled that administrative decisions which turn upon a question of law are open to review. *Dismuke v. U.S.*, 297 U.S. 167, 172, 173, 80 Led 561, 566.

¹ The appellants through the National Association of Naval Shop Analysts protested immediately and continuously so that appellants had ample opportunity to correct the unlawful action before it became effective (supra p. 2).

² "Regulations validly prescribed by a government administrator are binding upon him as well as on the citizen, and that this principle holds even when the administrative action under review is discretionary in nature." *Service v. Dulles* 354 US 363, 372; *Accardi v. Shaughnessy*, 347 US 260, 98 Led 681.

The application of the statute and regulations in force in November 1959 required on the undisputed facts that A&S employees be transferred.

The various tasks making up the rating of A&S constituted the major part of the "work being performed" or the "work being transferred" or the "duties of the position." Clearly the "positions" of the A&S employees were "identified" with the functions being transferred. The functions were transferred from one location (Production Department) to another location (Planning Department). Consequently, where the language of the statute and regulations are as specific and free from ambiguity as in this case, it becomes apparent that the action of the Navy Department in refusing to transfer the employees with the function was contrary to the law and regulations and invalid as the District Court quite properly found.

B. The Heart of the Production Control Program Was Being Performed by A&S and Was Preserved in the Transfer to P&E and Constituted a True Transfer of Function.

Under the applicable laws and regulations, the District Court found as a matter of fact that A&S was engaged in a function and that the function was transferred to P&E. The court had before it and gave careful consideration to a very full record, including the agreed upon facts reflected in the statements of fact submitted by the parties under Rule 9(h)¹ of the District Court for the District of Columbia (J.A. 10-16), the transcript of the testimony before the Civil Service Examiner and various documents including the Manual of Procedure for the Production Control System NAVSHIPS 250-746 (J.A. 153).

In essence this showed the inauguration of a new system after 1950 called the Production Control System. The

¹ Rule 9(h) of the District Court for the District of Columbia provides a process whereby the parties may settle the facts where, on motion for summary judgment, it is declared that no genuine issue of material fact exists. The parties accordingly under this rule settled the facts upon which judgment was issued. These statements are set forth in the Joint Appendix pp. 10-16).

March 1956 issue of the Manual states that it is a revision of the June 1951 publication NAVSHIPS 250-740-3 (J.A. 154). So beginning at the latest in June 1951 there existed a new Production Control System which remained unchanged until November 1959.

The heart of this program was "taking the total jobs, as issued by the Planning Department, and breaking them down at the shop level into basic operations or work elements." (J.A. 155). The team which recommended the program concluded "that the only possible way to obtain the optimum degree of control considered necessary was to provide for a more detailed breakdown of work at the shop level utilizing shop planners trained to analyze and determine the best job methods." A carefully selected group from the Production Department was given a six week training program, and a special rating of Analyst and Scheduler. This unit then proceeded to perform a function which is described in the Manual quite precisely at II-3:

"They are responsible for breaking jobs down operationally for the purpose of developing standard operational estimating data, developing and standardizing best methods of doing the work, scheduling operationally, progressing the work, maintaining workload charts, determining assist and/or service trade requirements, and in general providing for better control over a shop's productive efforts." (J.A. 157).

The functions of P&E are also described. That Division was to define the "scope of the work" e.g. paint or produce certain pieces of machinery or parts of a ship structure. (J.A. 157).

To give some indication of the extent of the importance and the substance of the function performed by A&S, it should be noted that they numbered 2,200 throughout the 11 shipyards as opposed to 1,200 in P&E; they justified a budget of over \$17,000,000 as opposed to \$7,00,000 for P&E. (J.A. 109).

In short the A&S because of special training and background was able to supply a necessary major phase

in the alteration, modification and repair of ships. Keeping in mind the size of the shops, from 60 to 3,000 employees, the A&S undertook by line item instructions to specifically advise the several shops and the many sections within the shops exactly what operations to perform—with full instructions—step by step until the job was finished (J.A. 14). The A&S know-how and technique covered all jobs from those with a cost of a few hundred dollars to those costing tens of thousands of dollars; from jobs taking a day to jobs covering a period of months; from replacing vegetable lockers to removing and repairing a propeller shaft or an engine; from jobs taking a day to analyze to jobs requiring several analysts for many days (J.A. 30). It was major, essential, and important as testified by the numbers employed and the budget provided (J.A. 108, 109, 49, 50) as evidenced by the lifting of these detailed line item activities and transferring them to P&E's Job Order Process Card and the need for A&S to train P&E to do the work. (Supra 1-5, J.A. 101, 106). (Supra 1-5, J.A. 68, 69, 70, 101, 106).

That the A&S Program was a "new big thing" and that it was transferred to P&E is not disputed and is in fact stipulated in the record (J.A. 71, 72).¹ The Appellants in their brief in the District Court stated that "the sole issue before the Court is whether the reassignment in the Naval Shipyards of the major portion of the duties of the A&S to P&E and the consequent abolishment of the A&S rating constituted a transfer of functions."

While it is true that after the transfer, the Job Order Card was combined with the Process Card, it is not disputed that line item details instructing each of the various shops and each of the several sections within a shop as to how to perform continued to be prepared in a manner similar to the procedure which had been followed prior to

¹ It is also specifically admitted that none of the objectives of the new Production Planning and Control Program were to be abandoned as a result of the transfer. (J.A. 96, 41).

the transfer. (J.A. 14, 15). As evidence of this the testimony showed that 90% of the work of the A&S was breaking down jobs into line items. (Supra p. 5). The witness Gayton testified that after transfer to P&E in his section, 11 of 15 employees were former A&S employees detailed or assigned and that 85% of their time was given to doing what they had been doing before. (Supra p. 6).

Attention is directed to the acceptance by the Appellants of the facts as presented at the hearing:

"Examiner Elliott: I tell you there is an opportunity for stipulation here that I think would save us a very burdensome record, because I think the Navy pretty much shows evidence to stipulate and avoid the detail.

"Mr. Murtha: The detail is not the important point. This was a function, know-how, which was within A&S before, and something new, and something they want to continue, and something they moved right up into P&E, and this isn't something tacked onto what P&E used to do, it isn't any minor, little adjustment, it is a great big substantial new thing.

"Mr. Ellis: Our exhibits show, Don, that these things are no longer done down in the shop by your clients; they are now across in the planning.

"Examiner Elliott: Using your adjectives, I think the Navy is willing to accept that this is a great big new thing.

"Mr. Ellis: We will show you the number of people involved; we have exhibits, up in the hundreds. We will show you money; we have charts on that. It isn't a small thing; we are not trying to minimize it." (J.A. 71, 72).

"Examiner Elliott: Well, as we have said in the beginning, it is conceded that these shop Analysts and Schedulers duties are now to be found over in P&E to a substantial extent." (J.A. 88).

Therefore, it is not disputed that A&S had been charged with performing a closely defined elaborate and substantial series of tasks requiring a special knowledge, training and technical ability. Further, it is not disputed that A&S

was required to train the P&E staff so that P&E could perform this special function. It is admitted that the Navy intended to and in fact has continued the A&S program in the Planning Department and because of this additional function, the staff of P&E has been substantially augmented.

Under Rule 52 of the Federal Rules of Procedure the findings of the court were not only fully supported, but there is little if any dispute as to the facts and the judgment therefore must stand.

C. The "Ex Post Facto" Definition of Function Advanced by Appellants is Opposed to the Purpose of the Statute and Has No Rational Relation to the Ordinary Accepted Meaning of English Words.

Ignoring the applicable law and the regulations currently in effect at the time of the transfer, Appellants subsequent to the order of November 1959 changed, or simply eliminated, the applicable regulations¹ and now ask that the new tailored interpretations be given retroactive effect to give legality to appellant's plain unlawful action in processing a reduction in force prior to transferring the employees.²

Appellees take sharp issue with the interpretation of the third proviso of Section 12 now being urged on this Court, not only because the Appellees' rights must be determined on the basis of the pertinent regulations in effect in November 1959 (sub part A supra) but also because the interpretation being given to the provision has no rational basis, would effectuate a result frustrating the purpose of the Act as expressed by Congress, and is at variance with the terms of the 1960 Departmental Circular and with positions now being taken by Appellants in actions pending in other courts.

¹OIR Notice 12351, dated June 30, 1960, and specifically made effective "on and after" Aug. 22, 1960. (infra appendix B, p. 37).

²The 1960 Departmental Circular being retroactive is "both inapplicable and invalid." *Miller v. U. S.*, 294 U.S. 435, 439, 440, 79 Fed 977, 980, 981.

1. UNDER THE LEGISLATIVE HISTORY AND THE ORDINARY MEANING OF WORDS, A STATUTORY TRANSFER OF FUNCTION TOOK PLACE

Appellees are asking the Court to ignore the meaning and purpose of the third proviso of Section 12 of the Veterans Act as determined by the clear language of the Act, the standard dictionaries and Regulation Section 20.8 (a) of the Civil Service Commission which has remained unchanged since the enactment of the proviso in 1944.

The Supreme Court in *Elder v. Brannan*, 341 US 277, 284, 285, uses the history of the inclusion of the "transfer of function" proviso as an example of a statutory provision which did not lend itself to any long standing history of interpretation arising under earlier veterans preference laws for a guide to its meaning as would be true of the interpretation of "competing employees" in the second proviso. The court pointed out that the third proviso was to grant "additional rights" as opposed to strengthened "existing veteran's preference."

The Chairman of the Civil Service Commission and the Hon. Joe Starnes, the author of the bill, stated in simple unmistakable language the evil sought to be eliminated through the added right given by the proposed language of the third proviso. The pertinent part of this testimony taken from the Hearing for May 19, 1944, on HR 4115, 78 Cong. 2d Sess. p. 10 before the Senate Committee on Civil Service is as follows:

**"STATEMENT OF ARTHUR S. FLEMING. COMMISSIONER
UNITED STATES CIVIL SERVICE COMMISSION**

Mr. Fleming: It does not guarantee a job. It simply provides, if there was a transfer of that kind, that the agency to which the functions have been transferred cannot go out into the open labor market to recruit people until they have placed all preference eligibles who are qualified for positions in that agency.

Mr. Starnes: That is one principle the veterans' organizations have fought for most vigorously. Often-time they have found agencies which have transferred or abolished their functions entirely and a new agency

was set up in its place. The new agency then would leave the veterans in the cold and go out into the open labor market and recruit new appointees. It is a device which the veterans claim have been used against them to eliminate them from Government appointments, by simply abolishing the function or transfer the function and leaving the personnel out in the cold. That is one practice of ignoring veterans' preference."

This then is the purpose for which Section 12 was enacted.

Shortly after enactment and in 1944, the Civil Service Commission placed in its regulations Section 20.8,¹ which section has remained throughout as the Commission's formally promulgated and published understanding of the scope of the third proviso.

The language of the regulation is significantly geared to a broad and realistic application of the statute. Contrary to the theory now advanced in this case by the Appellants, the Commission for 16 years thought in terms of "consolidation" and in terms of the transfer of "any or all functions" and that the employees would be transferred if they were in positions identified with "such function or functions." (20.8(a) Supra).

The Appellants and the Courts are required to give ordinary English words the meaning understood by the ordinary man. This has been the consistent holding of the courts so well expressed in *Addison v. Holly Hill*, 322 U.S. 607, 618, 64 S. Ct. 1215, 1221, where the Court set aside a definition of a term which the Congress had expressly empowered the Secretary of Labor to define:

"The natural meaning of words cannot be displaced by reference to difficulties in administration. *Commonwealth v. Grunseit* (1943) 67 CLR 58, 80. For the ultimate question is what has Congress commanded when it has given no clue to its intentions except familiar English words and no hint by the draftsman of the words that they meant to use them in any but an ordinary sense."

¹ In 1944 codified as 5 CFR 1944 Supp. Sec. 12.306.

The words of the statute, "any or all of the functions," and the words, "in the function or functions transferred," used "function" in its ordinary sense for the circumstances described. The standard dictionary meanings are consistent. Thus, Webster's New Twentieth Century Dictionary defines function as "3. Occupation; employment." Funk and Wagnall's College Standard Dictionary defines function as "one's appropriate or assigned business, duty, part or office."

The Department of the Navy in its regulations issued throughout the years preceding November 1959 reflected its understanding that "function" was used to describe the task or work being performed in a particular unit. (NCPI-170.9-4) and that a "consolidation" (170.9-4b.) constituted a transfer of function. (Appls., Appendix p. 34).

Nowhere in the law, the legislative history, the dictionary definitions, the regulations of the Commission, the Personnel Instructions of the Navy was there any hint in November 1959 that the purpose of Congress as expressed in the third proviso of Section 12 could be achieved by defining "function" as meaning "mission" and from there working out a rationale which creates an exemption to the proviso.

Now, under the proposal of the appellants, the statute would not apply if the tasks being performed by one unit are moved to another unit engaged in a related activity or for that matter an identical activity. This Court in *Feldman v. Herter*, 107 U.S. App. D.C. 239, 276 F2d 485, recognized that such an interpretation aborts the purpose of the Act because it would permit one unit to be closed

¹ It is obvious that the balance of the definition herewith set forth is not applicable: "1. the normal or characteristic action of anything; especially, any of the natural, specialized actions of an organ or part of an animal or plant; as, the procreative function. 2. a special duty or performance required of a person or thing in the course of work or activity; as, the function of a policeman is to protect and assist the public. 4. a formal ceremony or elaborate social occasion. 5. a thing that depends on and varies with something else. 6. in mathematics, a variable quantity whose value depends on and varies with that of another quantity or quantities."

down, the veterans let out, the work moved to another unit and the non-veterans employed because of the added function.

Congress intended to give equal preference to veterans and did not select the word "function" to draw distinctions between groups of employees depending on the relationship between the work of their unit and the work of another unit to which their work might be transferred. The thrust of the statute is in direct conflict with any such meaning of "function" even assuming the word is susceptible of the meaning now suggested by the Appellants. Statutes such as these are to be liberally interpreted to fully encompass the scope of the congressional intention. *Fishgold v. Sullivan Drydock*, 328 U.S. 275, 285, 90 Led 1230, 1240.

2. EVEN UNDER THE DEPARTMENTAL CIRCULAR OF JUNE 1960 THE APPELLANTS EFFECTUATED A TRANSFER OF FUNCTION.

Appellees suggest that Departmental Circular Supp. 2, June 1960, with all its ambiguities, does not support the appellants' position that a transferred function must be distinct from the work performed in the new location. The facts in this case show that the work of A&S was clearly identifiable after its transfer to P&E. In sub part IB, supra, it is shown that the Navy decisively denies any purpose of abandoning the line detail function which instructed the shops 'how' to do the various operations assigned to them, and the testimony of the government as well as appellees in great detail, plus supporting exhibits, demonstrate this.

It is also shown that at the hearing the Navy and the Examiner conceded that the work of the A&S was a new and substantial program and that it was moved and continued to exist after the move to P&E. (supra p. 17). Thus a clearly identifiable part of the agencies' "mission" was transferred.

Appellees call to the Court's attention two of the examples of what the Commission under Supp. 2 thought constituted

a true transfer of function. Consider the following from p. 4 of Dept. Circ. 740 Supp. 2:

A. "—Office A has responsibility for handling claims from three States while Office B handles the same kinds of claims for three different States. If Office A is abolished and Office B takes over responsibility for all 6 States there has been a transfer of functions. The function of A was not handling claims generally, but handling claims for 3 States. When Office B took over this additional function, a transfer of function occurred.

B. —Office A handles claims for all persons throughout the U.S. whose last names start with Letter A through M while Office B handles claims for persons whose last names start with N through Z. If Office A is abolished and Office B takes over all claims there is a transfer of functions. [JA 148]

Appellees submit that if two groups performing identical tasks, except for the technical fact that the papers on which they worked relate to different states or to different letters of the alphabet, are performing different functions, then surely what A&S was performing was a function distinct from the work performed by P&E.¹

The Navy itself found no conflict with the "mission" theory when it recently ordered employees to move to a new office upon the transfer of an electrical inventory unit to a central inventory unit. Appellees find it difficult to reconcile appellants' argument in this case with the brief submitted for the Navy March 1961 in a case now pending in the Court of Claims wherein it is quite properly stated:

"It must be pointed out also that the underlying purpose of a transfer of function is to promote a greater efficiency of the Government service by placing together related functions so they can operate in a consolidated

¹ Appellees do not, of course, accept the rationale that it makes any difference about initials or states because the statute makes no such distinction providing instead that a transfer occurs when the work of one unit is moved to another, and the employees are entitled to follow the work before a reduction in force may take place.

fashion. Certainly this cannot be accomplished if the consolidated functions are allowed to retain all of their separate and independent characteristics. Such would merely constitute the moving of a function from one location to another without accomplishing any greater efficiency than what was had prior to the movement, and thus the sole purpose of the transfer would be defeated. This does not mean, however, that the function which is transferred has completely lost its identity and has consequently been abolished, but rather that said function has been integrated with a related working function at one location allowing both to continue operating in a more efficient and economic manner. This Court realizes the ever increasing and complex management problems of Government agencies in a growing nation and a rapidly changing world, and it will not interfere with an agency's discretion properly exercised within the pertinent statutes and regulations to meet those problems by means which are calculated to preserve the efficient operation of the Governmental Services. Cf. *Peter E. Ray v. United States*, Court of Claims No. 449-57, decided December 3, 1958, on p. 5 of the slip opinion.¹

¹ Page 5 of Defendant's Opposition to Plaintiff's Motion for Summary Judgment in *Colbeth v. U.S.*, Court of Claims 399-59 filed Mar. 9, 1961, in which the Navy and the Civil Service Commission are the government agencies concerned. And see also this pertinent language on 3, 4 and 5: "Though the employing agency within the exercise of its administrative discretion ordered the E.F.I.C.D. function transferred, and though the Civil Service Commission twice upheld the agency's action as a proper and bona fide transfer of function within the meaning of the Veterans Preference Act and Section 20.8 of the Commission's regulations, plaintiffs obstinantly assert that there was no transfer of function. Plaintiffs' only reason in support thereof is the singular pronouncement that the E.F.I.C.D. function did not reappear in identifiable form at the S.P.C.C. at Mechanicsburg, Pennsylvania, because no positions were transferred to Mechanicsburg. This of course has no support in fact or law and is therefore without merit. For it is clear that the transfer or abolishment of certain positions has no direct relevance to the question of whether a function has been transferred. Certainly plaintiffs cannot seriously urge that the terms "position" and "function" are interchangeable.

On the other hand the record clearly indicates that the E.F.I.C.D. function did reappear in identifiable form at Mechanicsburg. The affidavit prepared by Mr. Charles A. Kirby, Assistant Industrial Relations Officer at Mechanicsburg, states in pertinent part the following:

The functions of EFICD were very similar to those of SPCC. At the present time, three former EFICD personnel are assigned to the SPCC

Admittedly the functions of A&S and P&E were related functions and the consolidation of these functions was a transfer of functions. It follows that the Navy must act in this case as they did in the consolidation of the inventory units in *Colbath v. U. S.*, U. S. Court of Claims, 399-59 filed Mar. 9, 1961.

Of course in the Court of Claims as they do in this Court, the Appellants cite the usual cases to argue that the Courts cannot look beyond the administrative decision. But Appellees believe the Appellants should not be allowed in this manner to blow hot and cold depending on what course they have initially and privately decided upon irrespective of laws and regulations and then to come into court and urge that they are right because they say they are right. Appellees strongly urge upon this Court the application of the rule of the Supreme Court in *Joint Anti-Fascist Relief Comm. v. McGrath*, 341 U.S. 123, 136, 95 L. ed 817, 835 where it was said:

"An 'appropriate' governmental 'determination' must be the result of a process of reasoning. It cannot be an arbitrary fiat contrary to the known facts. This is inherent in the meaning of 'determination!' It is implicit in the government of laws and not of men. *Where an act of an official plainly falls outside of the scope of his authority, he does not make that act legal by doing it and then invoking the doctrine of administrative construction to cover it.*" (Emphasis added).

(Footnote continued from page 24)

Stock Control Division and are working exclusively on material transferred from Portsmouth. In addition, five SPCC technicians are working exclusively on EFICD material. However, these are only temporary measures. Within the next several months, the EFICD material will be completely integrated with the SPCC material and there will be no distinction. One organizational component has been set up in the Technical Division to handle the technical aspects of the material. This is also only a temporary measure and this unit will be abolished on or about January 1, 1958. Even after the complete integration of EFICD material with SPCC material, employees working on former EFICD material may possibly continue doing so in conjunction with similar types of SPCC material. (Emphasis supplied.)

Since certain personnel were assigned to work exclusively on EFICD material at Mechanicsburg, that work, and, hence, the function, appeared and existed at Mechanicsburg in identifiable form after the transfer."

From the entire history of this case the "ex post facto" aspect of the Departmental Circular, the inconsistencies and ambiguities contained therein, its arbitrary application, let alone the clear statutory language and purpose it must be said in the language of the Supreme Court in the *Anti-Fascist* case (*supra*) that the conduct of the dependents was "patently arbitrary, the deference ordinarily due administrative construction of an administrative order is not sufficient to bring its alleged conduct within the authority conferred by [law]. The doctrine of administrative construction never has been carried so far as to permit administrative decision to run riot." (341 U.S. 137, 138).¹

II

APPELLANTS MAY NOT PRESENT NEW GROUNDS IN THE APPELLATE COURT WHICH NOT ONLY WERE NOT RAISED OR CONSIDERED IN THE ADMINISTRATIVE AND JUDICIAL PROCEEDINGS BELOW BUT ARE WITHOUT LAWFUL SUPPORT.

A. The "Competitive Area" Interpretation is Neither Applicable Nor Lawful

It is fair to speculate that if the Commission had been of one mind and thought the "competitive area" theory was sound and could stand a judicial test, it would surely have been advanced as one ground for denying transfer of function rights to Appellees in the proceedings below.

The appellate court, except under unusual circumstances not present here, may not rule on matters raised for the first time at the appellate level. The reason for this is that if the issue had been raised below, the opposing party would

¹ Appellants have failed to meet the minimum requirements for asking that weight be given to their administrative positions. The Supreme Court has stated these requirements quite simply in *Skidmore v. Swift*, 323 U.S. 134, 140, 89 L ed 124, 129: "The weight of such a judgment [interpretation] in a particular case will depend upon the thoroughness evident in its considerations, the validity of its reasoning, its consistency—with early and later pronouncements, and all these factors which give it power to persuade, if lacking power to control.

have had an opportunity to present evidence which could become a part of the record for the consideration of the appellate court. For this and many reasons the Courts have consistently refused to entertain new grounds on appeal. *American Export and Import v. O'Neill*, 221 F2d 829, 831, 95 U.S. App. D.C. 274; *Helvering v. Wood*, 309 U.S. 344, 348, 349, 84 L ed 796, 799.

The adverse decision of the Civil Service Commission was not based on the "competitive area" limitation. The decision (J.A. 170) was confined *carefully and specifically* (see closing paragraphs) (J.A. 172) to a holding that transfer of functions did not take place because the work of the employees in the two locations was related. "Competitive area" was not argued by Appellants nor considered by any decision making entity during the course of this appeal.

Moreover, the notion that a transfer cannot occur in the same "competitive area" *did not appear* until the issuance of Department Circular¹ 740, Supp. 2, June 1960—effective August 22, 1960 (J.A. 152). Therefore, it is not binding on the Appellees as the unlawful action which is at issue in this case occurred in November, 1959, and prior to August 22, 1960.²

The Appellants again shut their eyes to the plain language of the proviso which does not contain any limitation with respect to "competitive area." It is common knowledge that each of the Departments of the Government is filled with a variety of units and that functions are trans-

¹ Appellees have not undertaken a line by line correction of the continued references by Appellants in their brief (e.g. pp. 10, 11) to Civil Service Commission and Navy Regulations without making clear they are quoting or discussing language which was not claimed to be effective until Aug. 22, 1960. Appellees call attention to the only applicable NCPI provisions as set forth in Appellants' Appendix to their brief on pages 34, 35, 36, 37 and the only applicable Civil Service Regulations 20.8(a) *supra* p. 7 and Departmental Circulars No. 740—1954 Joint Appendix p. 138.

² "Departmental Circulars are issued by the Commission to the various Departments of the government. When "Regulations" are issued they are designated as such, reference is made to the authority under which they are issued and they are then published in the Code of Federal Regulations.

ferred from one to the other frequently. In such cases the third proviso must apply without respect to the fact that both units are in the same area, otherwise the benefits of the transfer of function proviso would be denied annually to many thousands of employees. It cannot be assumed that the Congress intended to discriminate in this manner.

Finally, the Appellants ignore the regulations of the Navy in effect at the time of the transfer which provided that the same policy and other provisions would apply where functions were transferred from one location to another within the same activity. NCPI 170.9-4b (Appls. Appendix p. 34). Consequently, under these regulations binding on the parties, a transfer did take place within an activity and without regard to whether a shipyard may consist of one "competitive area." Furthermore, as appellees show *supra* p. 12 a transfer may occur within an agency. This carries out the position of the Commission expressed in Dept. Circ. No. 740, Jan. 12, 1954 (J.A. 138): "An agency, in this context could be an entire independent establishment, a bureau, branch, division, section or *smaller organization unit*." This interpretation is consonant with the purpose of the statute and has been consistently applied for many years.

Appellees submit there can be no legal justification for accepting the principle of transfer of function from one section or smaller unit to another while at the same time denying a transfer because it was being made in the same "competitive area." The rights of veterans under the Veterans Preference Act are not ephemeral to be dispersed by the shifting winds of administrative fiat.

B. The Reduction in Force Was Unlawful Per Se and the Technique Employed in Carrying It Out is Neither Relevant Nor Material to the Issues Before the Court.

Turning to Appellants' Part B, it is apparent that the very statement of the point is a contradiction in terms. Obviously, if the employees were not transferred with the

function, there can be no lawful or "proper" reduction in force.

Appellants in Part B argue that although the reduction in force proceedings were held in the wrong place at the wrong time and for the wrong people, nevertheless they were very considerate of all the other rights of Appellees. This is no answer to Appellant's failure to comply with the law which required that the employees follow the transfer of functions out of the Production Department and into the Planning Department before any reduction in force took place.¹ Appellants devote pp. 20-24 to a recitation of the regulations and court decisions dealing with the reassignment rights of employees after they have been reached by a properly conducted reduction-in-force proceedings. The argument made and the cases cited all are predicated on the application of Civil Service Regulation Sec. 20.5 (5FCR20.5) which relates only to reassignment rights of an employee who cannot be retained because of a reduction in force.²

Appellants apparently confuse the rules relative to reassignment after a reduction in force with the right to transfer with the function. They cite this Court's decision in *Cutting v. Higley*, 98 U.S. App. D.C. 288, 235 F.2 515, but here the Court was applying *reassignment after an employee had been properly reached for reduction in force*. As was noted in part I supra, the third proviso was a new and distinct concept in the Veterans Preference Act of 1944. It requires that the employees be transferred with their function before any reduction in force may occur. Congress did not *require* a reduction in force upon a transfer—un-

¹ The Navy Regulations are explicit: NCPI 170.9-4,c "(2) Employees whose positions are being abolished because the function is being transferred to another Service or naval activity enjoy transfer of function rights even though no additional personnel are required by the Service or activity acquiring the function.

² Sec. 20.5 Actions. (a) *In general*. Employees who cannot be retained in their positions because of a reduction in force will be changed to positions that will last as long as three (3) months, separated, or furloughed.

doubtedly many transfers are followed by reduction in force action, but the protection is secured through first moving the employees to the new location.

Appellants miss the point at issue. We do not know that any of the Appellees would have been reached for reduction in force if such action had occurred after the transfer. The officially promulgated regulations of the Civil Service Commission, Section 20.8 (a) (*supra* p. 6) covering transfer of functions simply and firmly directs that "before any reduction in force" the employees identified with the functions shall be transferred. Appellants' argument points up the need for strict compliance with the rule, for it is obvious that after the functions were transferred such functions did not remain in the Production Department. The positions identified with those functions (i.e. A&S) no longer existed in the Production Department. The employees who had been identified with the transferred functions were not moved contrary to the statute, so of course they had no positions and all of them were reached for reduction in force conducted in that Department. They were then out of employment except as they might have reassignment rights.¹ Reassignment comes into play only after an employee is lawfully reached for reduction in force. If the employees had followed their function to the Planning Department, the reduction in force would have been processed depending upon the circumstances prevailing there. What the exact result would be is not known because the Appellants failed to follow the lawful procedures. But we do know one circumstance, the rating of A&S was abolished but the functions were not abolished so that positions by whatever title required to perform the transferred functions continued to exist. Hence, a reduction in force in the Planning Department could not be based on the abolishment of the A&S duties and an automatic reaching of all

¹ The Notices of Personnel Action given to each A&S employee actually stated that the action taken whether "change to lower grade" or otherwise stated "action effected at employee's request in lieu of separation by reduction in force."

A&S employees. The purpose of the third proviso is to prevent just what occurred in this case. That is, an agency cannot refuse to transfer the employees and then say "the work is gone and your jobs are abolished and you are reached for separation under "reduction in force action and the only rights you have are to reassignment." We submit that if the reduction in force had been processed in the Department to which transfer was made, there could have been no complete abolishment of appellees' jobs and an automatic reaching for reduction in force. This is exactly what the State Department maintained in *Feldman v. Herter*, 276 F2d 485. That Department said the job had been abolished by the Army, therefore, the employee was automatically separated and transfer was not required. That is what the Appellants are claiming here and it is no more valid than in the *Feldman* case. It is required, and the District Court properly held that the work constituted a function and that the function was transferred and the employees were entitled to the protection of the third proviso of Section 12. Of course, on a transfer of function the circumstances prevailing at the new location may not be identical and, as this Court said in *Feldman, supra*, it is for the government in the new location to find a position as near as possible to the old position and put the employee in it before any reduction in force can be processed. This was the intention of Congress, for any other interpretation would in almost every instance make the third proviso ineffective as is so well demonstrated in this case.¹

Finally, Appellants Part B asks this Court to undertake to make a decision on a matter very pointedly eschewed by the Commission itself. The decision was based solely on the unlawful holding (*Supra* p. 21) that a transfer of function did not take place because the activities transferred bore a relationship to the activities in the new location. The

¹ The Court of Claims has adopted the same view as this Court in holding that practical adjustments must be made to insure that the purpose of the transfer of function provision is achieved. *Kirby v. U.S.* (Ct. Cl.) 155 F Supp 240.

Commission concludes by specifically refusing to pass on any other related questions (J.A. 172) or to adopt the Appeals Examiner's interpretation of Section 20.8(a). This section of the Commission's regulations (*supra* p. 6) provides that employees be transferred "without change in tenure of employment." The Examiner said this meant the A&S employees, although the basic grades were the same, could not be placed in P&E jobs because of a few cents difference in pay. (J.A. 167).

As Appellees had forcefully attacked this position as unlawful before the Commission, the refusal of the Commission to pass upon it is indicative of the conflicts on these questions which apparently exist within the Commission. Obviously, "tenure of employment" as used in Section 20.8(a) relates to permanency, i.e., to whether an employee is temporary, probational or permanent. This is in accord with the Commission's definition of tenure as contained in the Federal Personnel Manual at Z1-218.015:

"Tenure" means the period of time an employee may reasonably expect to serve under his current appointment. Tenure shall be granted and governed by the type of appointment under which an employee is currently serving and without regard to whether he has a competitive status or whether his appointment is to a competitive position or an excepted position.

Tenure has no relation to wages. It has no relation to the questions at issue.

What the Commission is doing here is saying to the Court, "although we are unwilling to reach a decision on this basis, nevertheless we think you should." Appellees suggest that the same doubts as assailed the Commission are still present. The language of the statute and the legislative history provide no grounds for exception on the basis of the wage scales at the place to which a transfer is made. The Commission, too, was aware of its ruling which this Court fully supported and enforced in *Feldman v. Herter*, 276 F 2d 485, 107 US App. D.C. 239. In the *Feldman* case the Commission

had told the State Department that it could not frustrate the transfer of function provision because it did not have an identical job for the employee. This Court agreed, stating:

"If no position of precisely like status and pay is available, the Department of State should carry out the Commission's recommendation as nearly as may be by employing appellant, as the statute requires, in a position for which [he is] qualified before [it] shall appoint additional employees from any other source for such positions."

In view of this background the Commission's refusal to support the Examiner on this ground is understandable.

Appellee believes also that the Commission knew that the A&S and P&E employees were all in the same class and all received wages based on the rate for each employee's craft plus a differential allowing a spread in most cases of 5%. Under the formula there was a ceiling for P&E which did not exist for A&S so that many A&S employees actually were paid more.¹

In this case the employees were not transferred and this record does not disclose any data upon which this Court can determine all of the factors necessary for properly establishing and processing retention registers for the employees in the Planning Department to which the functions were transferred.

If the appellants acted unlawfully, it is no answer for them to say that in any event no one was actually let out. The fact is that many hundreds of A&S employees suffered and continue to suffer loss of income as a result of the unlawful action. If the reduction in force had occurred after transfer, many might not have been affected. The fact that some of them after a proper transfer might have been reached by reduction in force and reassigned to lower paying positions has no bearing on the issues before the Court. For the purpose of the application of the statute,

¹ e.g. Pattern Makers, tool and die makers, electronics and fire control.

all of the A&S employees suffered the loss of substantial rights. It is idle to speculate or to ask this Court to determine on a speculative basis the effect of a proper and lawful action which the Appellants failed to take.

CONCLUSION

For the foregoing reasons the judgment of the District Court must be affirmed.

DONALD M. MURTHA
Attorney for Appellees
1009 Tower Building
Washington 5, D. C.

APPENDIX A

UNITED STATES CIVIL SERVICE COMMISSION

Washington 25, D. C.

September 18, 1959

DEPARTMENTAL CIRCULAR NO. 1019

(Supersedes D. C. 990)

TO: HEADS OF DEPARTMENTS AND INDEPENDENT ESTABLISHMENTS

SUBJECT: ENFORCEMENT OF AGENCY PROCEDURAL REQUIREMENTS GOVERNING ADVERSE ACTIONS

In deciding the case of *Watson v. United States*, 162 F. Supp. 755, the United States Court of Claims held that the procedural regulations of an agency issued pursuant to statutory authority have the force and effect of law and must be complied with by the agency that issued them. Copies of the Watson decision were sent to all agencies by Department Circular No. 747, Supplement No. 5, dated June 19, 1958.

In Department Circular No. 990, the Commission noted that it already took into account an agency's substantive requirements in judging an appeal from an adverse action on its merits. For example, the standards of performance or conduct prescribed by the employing agency may be pertinent in determining the appeal of a veteran discharged for misconduct. The Circular distinguished these matters from agency procedural requirements, which the Commission announced it would not enforce.

The Commission has since reviewed the latter determination and concluded that it should be changed in the interest of the Courts in these matters. Therefore, allegations that procedural requirements of an agency were not followed in taking an adverse personnel action will be considered by the Commission on appeal.

More specifically, where Commission regulations now provide for an appeal by an employee from an adverse

agency action, the employee may appeal to the Commission from an alleged violation of agency procedural regulations. Such an allegation may be the sole basis for the appeal or may be made in conjunction with an alleged violation of Commission regulations. An appeal that alleges violation of agency procedural regulations must:

—relate to an adverse action covered by Commission regulations (this would include such actions as removals, demotions, and suspensions, but not matters such as reprimands or non-promotion).

—involve one of a class of employees entitled to appeal the adverse action under Commission regulations (this would include such classes as career, career-conditional, and non-temporary appointees with veteran preference, but exclude temporaries and non-veterans in excepted positions).

—be submitted to the Commission within the limits provided by Commission regulations (Parts 9, 20, and 22, normally require an appeal to be submitted within ten days after the adverse action).

When it is found that an authoritative written agency requirement was not followed in taking the adverse action and this materially affected the appellant's rights, the Commission may reverse the action as procedurally defective.

This revised policy does not lessen agency responsibility for compliance with, or enforcement of, its own requirements.

The revised policy is effective with respect to appeals under consideration on the date of this Circular or received on or after that date.

By direction of the Commission:

(s) *Warren B. Irons*
WARREN B. IRONS
Executive Director.

Departmental Circular No. 1017
was limited to Heads of agencies.

APPENDIX B

DEPARTMENT OF THE NAVY
Office of Industrial Relations
Washington 25, D. C.

OIR NOTICE 12351

30 Jun 1960

From: Chief of Industrial Relations

To: All naval activities employing civilians

Subj: Applicability of Retention Preference Regulations
in of Function; change in Civil Service Commission
Regulations governing

Ref: (a) USCSC Departmental Circular 740, Sup. 2 of 23
June 1960

(b) NCPI 170.9-4

1. *Purpose.* This Notice invites attention to the provisions of reference (a), briefly discusses their significance in relation to existing Navy regulations concerning this subject, and indicates action to be taken.

2. *Discussion.* The definitions and interpretations of the terms "function" and "transfer of function" provided in reference (a) should be helpful in deciding whether, in any given situation, transfer of function procedures are for application. Particularly significant is the designation of a "competitive area" (i.e., a naval activity) as the unit from or to which a function may be transferred; this eliminates the problems which have previously arisen in connection with intra-activity reorganizations. It is also believed the new guides for identifying employees with functions will be more clearly definitive than present criteria, particularly with respect to maintenance and administrative support personnel.

3. *Changes required in existing instruction.* Upon the effective date of reference (a), the following changes in reference (b) will become necessary:

Subparagraph *b, Policy*: delete sentence "The same criteria shall apply when functions are transferred to a different location within the same activity."

Subparagraph *c, Identifying positions with transfer of functions*:

1st sentence, substitute "competitive area" for "location"

2nd sentence, delete "to a different location within the activity."

delete criteria (1) through (4), and use instead the section of reference (a) headed "Guides for Identifying Employees with Functions."

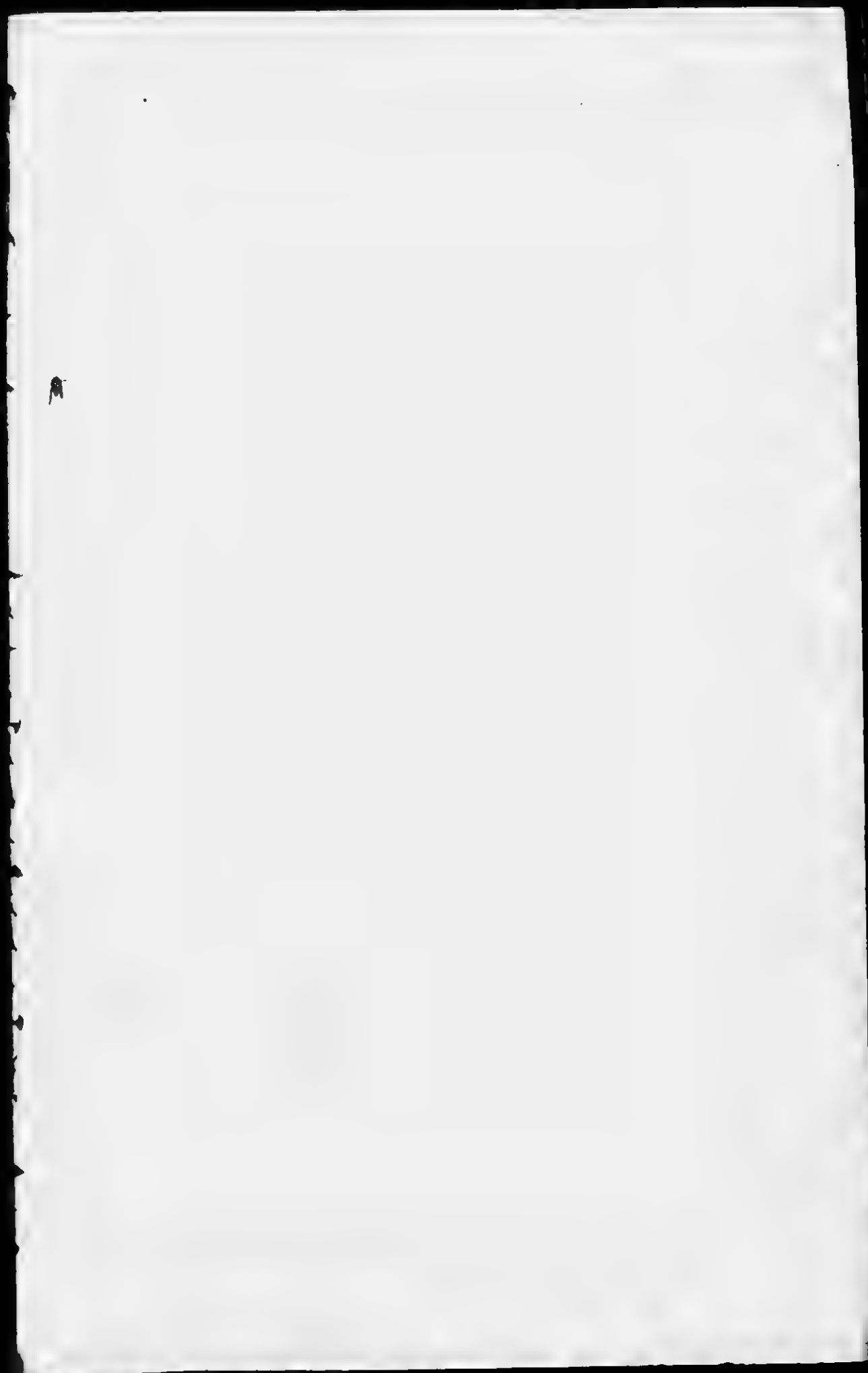
4. *Effective date.* Reference (a) will become effective on 22 August 1960. Accordingly, its provisions shall be applied to all situations in which the question of transfer of function is involved, on and after that date.

5. *Cancellation.* This Notice will be considered cancelled when its provisions have been incorporated in reference (b), and for record purposes on 31 December 1960.

(s) *R. E. Cronin*
R. E. CRONIN

DISTRIBUTION:

OIR Special Lists #25, 25c and 25f



JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,216

ROBERT S. McNAMARA,
Secretary of Defense, et al.,

Appellants,

v.

JOSEPH W. DICK, et al.,

Appellees.

On Appeal from the United States District Court
For the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 2 1962

Joseph W. Stewart

CLERK

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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JOINT APPENDIX

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JOINT APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH W. DICK,
Preston & Lotus Avenue, Ashland, New Jersey,
JOSEPH ERMILIO,
913 Lake Shore Drive, Collingswood 7, New Jersey,
THOMAS F. VAN ARSDALE,
146 Lake Drive, Bellmawr, New Jersey,
MICHAEL J. MC CONNELL,
5615 Rodman Street, Philadelphia 43, Pennsylvania,
ROBERT A. MC KINNEY,
6331 Regent Street, Philadelphia, Pennsylvania,
EDWARD J. GAYTON,
525 E. Winona Avenue, Norwood, Delaware
County, Pennsylvania,
LAFAYETTE F. SAWYER,
4507 Griffin Street, Portsmouth, Virginia,
WALTER G. HARDEN,
1667 Croyden Road, Norfolk 3, Virginia,
MARION R. BONNEVILLE, JR.,
1331 Sunset Drive, Norfolk 3, Virginia,
BERNARD R. SMITH,
126 Broad Street, Portsmouth, Virginia,
AUGUSTINE J. BOROODY,
213 Wildwood Road, Portsmouth, Virginia,
COLUMBUS J. PAGE,
800 Tyre Neck Road, Portsmouth, Virginia,

Plaintiffs

v.

ROBERT S. MC NAMARA,
Secretary of Defense, Washington 25, D. C.,
JOHN CONNALLY, JR.,
Secretary of the Navy, Washington 25, D. C.,
JOHN W. MACY, JR., Chairman, United States
Civil Service Commission, Washington 25, D. C.,
FREDERICK J. LAWTON, Member, United States
Civil Service Commission, Washington 25, D. C.,

Defendants

Civil Action
No. 732-61

DOCKET ENTRIES

<u>Date</u>	<u>Proceeding</u>	
<u>1961</u>		
Mar. 10	Complaint, appearance	filed
Mar. 10	Summons, copies (6) and copies (6) of Complaint issued Nos. 1, 2 & 3 ser 3/13/61 Atty Gen ser 3/16/61. US Atty ser 3/13/61.	
May 2	Stipulation of counsel extending time to answer or otherwise plead to and including 6/12/61.	filed
Jun 12	Answer of defts to complaint; c/m 6/12/61; appearance of David C. Acheson, Joseph M. Hannon & Ellen Lee Park.	filed
Jun 12	Calendared (AC/N)	
Oct. 4	Called.	Pretrial Examiner
Dec. 13	Motion of defts for summary judgment; statement of facts; P & A; c/m 12/13/61; exhibits A, B, C & D; MC 12/13/61.	filed
Dec. 26	Stipulation of counsel extending time for pltf to answer motion for summary judgment to and including 1/15/62.	filed.
<u>1962</u>		
Jan. 16	Cross motion of pltffs for summary judgment; P & A's in support & in opposition to defts' motion for summary judgment; statement; c/m 1-1-5-62; M.C. 1-16-62.	filed
Feb. 5	Objections of defts to pltffs' statement of material facts; c/m 2-5-62.	filed
Feb. 5	Memorandum of points & authorities by defts in opposition to pltffs motion for summary judgment; c/m 2-5-62.	filed
Mar. 14	Order denying defts motion for summary judgment & granting pltffs motion for summary judgment. (N)	Curran, J.
Mar. 14	Procedures Manual for United States Naval Shipyards. (Exhibit)	filed
May 11	Notice of appeal by deft from order March 14, 1962; copy to D. Murtha (No fee government)	
June 19	Order extending time to file record on appeal to & including August 10, 1962. (N)	Curran, J.
Aug. 10	Record on Appeal delivered to United States Court of Appeals (No charge-USA-95¢)	
Aug. 10	Receipt from United States Court of Appeals for original papers.	filed

[Filed Mar. 10, 1961]

C O M P L A I N T

**SUIT FOR DECLARATORY JUDGMENT TO DETERMINE
EMPLOYMENT RIGHTS UNDER THE VETERANS
PREFERENCE ACT AND FOR A MANDATORY ORDER
REQUIRING THE DEFENDANTS TO COMPLY WITH THE
STATUTE AND REGULATIONS**

Plaintiffs for their cause of action complain of the said defendants and allege:

1. The plaintiffs are citizens of the United States. Plaintiffs Joseph W. Dick, Joseph Ermilio and Thomas F. VanArsdale are residents of the State of New Jersey. Plaintiffs Michael J. McConnell, Robert A. McKinney, and Edward J. Gayton are residents of the State of Pennsylvania. Plaintiffs Lafayette F. Sawyer, Walter G. Harden, Marion R. Bonneville, Jr., Bernard R. Smith, Augustine J. Boroody and Columbus J. Page are residents of the State of Virginia.

2. This cause of action arises under the Constitution and laws of the United States.

3. The jurisdiction of this Court arises under the provisions of Sections 2201, 2202 of Title 28 and Section 1009 of Title 5 of the United States Code.

4. Mr. Robert S. McNamara is the duly appointed, acting and qualified Secretary of Defense, a Department of the United States Government. Mr. John Connally, Jr. is the duly appointed, acting and qualified Secretary of the Navy within the Department of Defense. At all times referred to herein, these defendants were and are officially charged by law with the administration of laws relating to the employment of civilian employees under the jurisdiction of the Bureau of Ships within the Department of the Navy.

5. The defendants, John W. Macy, Jr. and Frederick J. Lawton are the members of the United States Civil Service Commission of which defendant John W. Macy, Jr. is Chairman. A vacancy exists in the office of

the third member of the Commission. These defendants are charged by law with the administration of certain laws relating to the appointment and retention of civilian personnel in the government service of the United States.

6. The plaintiffs were employees of the Government of the United States at the time this cause of action arose and were duly qualified as members of the competitive civil service and were employed in the Bureau of Ships under the jurisdiction of defendants Robert S. McNamara as Secretary of Defense and John Connally, Jr. as Secretary of the Navy. Plaintiffs served in the armed forces of the United States, have efficiency ratings of satisfactory or better, and are entitled to Federal employment preference under the Veterans' Preference Act of 1944, as amended.

7. Based on the findings of a private management engineering firm, resulting from an elaborate survey, the Bureau of Ships established in 1951 a new program described as the Production Control System. The heart of the program was the establishment of a special unit to prepare performance analyses in production shops and the establishment of valid standards of measurement. To accomplish this, the Shop Planning Sections were staffed with Shop Analysts and Schedulers. They were made responsible for estimating man hours required and breaking jobs down operationally for the purpose of developing standard operational data, developing and standardizing best methods of doing the work, scheduling operationally, progressing the work, maintaining work load charts, determining assist and/or service trade requirements, and in general providing for better control over a shop's productive efforts. To perform this phase of the new Production Control System, a new rating was established and given the name of Shop Analysts and Schedulers. Approximately eighteen hundred employees were selected specially for this rating and were given extensive special training in order to perform the assigned function. Employees subsequently assigned to this rating were required to pass a special examination. In the budget for the Planning Program, 51.7% or \$17,239,600 was allocated in 1959 to shop job analysis in the shipyards.

8. The plaintiffs, for many years prior to 1960, were employed in the Production Department of the Naval Shipyards at Norfolk, Virginia and Philadelphia, Pennsylvania, in the rating entitled Shop Analysts and Schedulers. The plaintiffs were part of a group of eighteen hundred employees throughout eleven Naval Shipyards who were qualified under this rating. Employees in this rating were required to perform a particular function for which they were given special training and which was not performed by anyone else.

9. On or about November 17, 1959, the Bureau of Ships abolished the rating of Naval Shop Analysts and Schedulers and ordered that the function performed by the plaintiffs and those in similar positions be transferred out of the Production Department and into the Planning Department at each shipyard. Specifically, the function was transferred out of the shops and into the Planning and Estimating Division in other buildings in the Shipyards. Subsequent to the transfer of functions, the Planning and Estimating Division appointed additional employees to perform the duties formerly performed by Shop Analysts and Schedulers.

10. The abolition of the rating and the transfer of functions for most shipyards was completed by July 1960. Neither the plaintiffs nor any of the Shop Analysts and Schedulers were transferred with the functions to the Planning and Estimating Division. Thereafter, the Bureau of Ships processed a reduction in force proceeding in which the competitive level was confined solely to Shop Analysts and Schedulers.

11. The action of the defendants was unlawful in that, under Section 12 of the Veterans' Preference Act of 1944, said defendants were required as a matter of law to transfer the plaintiffs together with their functions to the Planning and Estimating Division and, thereafter, if necessary, process a reduction in force proceeding. The failure of said defendants to transfer the plaintiffs was also unlawful in that it failed to comply with Civil Service Commission Regulation Section 20.8(a), Departmental Circular No. 740 and the regulations of the Department of the Navy, NCPI 170.9-4.

12. The action was also unlawful in that (a) it failed to include the positions in the Planning and Estimating Division in establishing the competitive level for reduction in force contrary to Civil Service Regulations Section 20.4(b), NCPI 170.2(b), 170.4-2, 170.6, and (b) plaintiffs had reassignment rights to positions in the Planning and Estimating Division but that contrary to the Veterans' Preference Act, Regulation Section 20.5 of the Civil Service Commission and Regulation 170.8 of Navy Civilian Personnel Instructions, the defendants denied the right of plaintiffs to displace the Planners and Estimators having fewer retention points.

13. The plaintiffs are all members of the National Association of Shop Analysts and Schedulers. All of the members of this Association with a rating designated by the Bureau of Ships as Shop Analysts and Schedulers were engaged in performing the same function as that performed by plaintiffs. These employees performed an identical function in each of the various Naval Shipyards in the United States where they were employed. All of the Shipyards are under the jurisdiction of the Bureau of Ships and are located at Portsmouth, Boston, New York, Philadelphia, Norfolk, Charleston, San Diego, Long Beach, Mare Island, San Francisco, Puget Sound and Pearl Harbor. The abolishing of the rating of Shop Analyst and Scheduler and the subsequent reduction in force proceedings as described herein similarly affected all of the Shop Analysts and Schedulers.

14. By agreement entered into between the Department of the Navy and the National Association of Shop Analysts and Schedulers, dated May 11, 1960, and approved by the Civil Service Commission, a test case was processed under the names of the plaintiffs herein. By the terms of this agreement, upon the processing of the appeals which were filed by plaintiffs, the final decision of the Commission was by agreement dispositive of the question of transfer of function in the appeals cases brought by members of the Association. The agreement was limited solely to questions of law and fact relating to transfer of functions.

15. Plaintiffs appealed to the Civil Service Commission from the reduction in force action. The appeal was heard by the Appeals Examining

Office in Washington, D. C. This office denied relief whereupon plaintiffs appealed to the Board of Appeals and Review. The Civil Service Commission itself undertook to render the final decision which was adverse to the plaintiffs on December 7, 1960. By the agreement referred to herein, this decision then finally disposed of the appeals of all of the Shop Analysts and Schedulers belonging to the Association and who had filed appeals in the appropriate Regional Office. Thus by operation of the agreement all of the appeals have now been disposed of adversely to the Shop Analysts and Schedulers and they have all, including the plaintiffs, exhausted their administrative remedies with respect to the question of transfer of functions.

16. The action of the defendants in failing to comply with the Veterans' Preference Act of 1944 and the regulations of the Civil Service Commission and the Department of the Navy implementing the statute gives to all Shop Analysts and Schedulers a common right to relief. Plaintiffs' claim is one common to all members of this class, and there being common questions of law and fact affecting common rights, therefore the plaintiffs sue not only for themselves but for all those similarly situated, and seek a common relief, all within the meaning of Rule 23 of the Rules of Civil Procedure.

17. The said defendants, John W. Macy, Jr. and Frederick J. Lawton, constitute the Civil Service Commission of the United States to which the plaintiffs appealed for the purpose of preserving their rights as preferential employees of the United States and, acting as such Commission, neglected to accord to the plaintiffs the preferential right in their employment with the United States, and the said defendants are joined as parties to this action so that the rights accorded to the plaintiffs as such preferential employees of the Government of the United States may be lawfully declared by a declaratory judgment.

18. The plaintiffs' rights as government civilian employees are being willfully and unlawfully violated by the said defendants, all of whom have full and complete knowledge of plaintiffs' rights and it is the plain ministerial duty of the defendants to take such action as is necessary to

give to plaintiffs and those similarly situated their full preferential rights as provided by law.

WHEREFORE, the plaintiffs pray:

1. That plaintiffs have judgment against the said defendants fixing and determining the rights of plaintiffs and those similarly situated as preferential employees performing a function within the meaning of Section 12 of the Veterans' Preference Act of 1944 and as such employees entitled to have been transferred with the transferred function from the Production Department to the Planning Department before additional employees were appointed from any other source.

2. That a mandatory injunction issue directed to said defendants requiring them to forthwith restore plaintiffs and all of those similarly situated to their rightful positions from which each was wrongfully and illegally removed.

3. That the Court award to each plaintiff and all of those similarly situated all of the rights, benefits and privileges each would have had if each had not been illegally separated through reduction-in-force procedures.

4. For such other and further relief as to the Court may appear to be equitable and just in the premises.

/s/ Donald M. Murtha
Attorney for Plaintiffs
* * *

[Filed June 12, 1961]

A N S W E R

First Defense

The complaint fails to state a claim against defendants upon which relief can be granted.

Second Defense

Answering specifically the numbered paragraphs of the complaint defendants aver the following:

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. 3. Defendants are not required to answer the conclusions of law and jurisdictional allegations of paragraphs 2 and 3, but they deny that the court has jurisdiction of this cause under 5 U.S.C. 1009.

4. 5. 6. Defendants admit the allegations of paragraphs 4, 5, and 6.

7. 8. 9. 10. 13. Defendants admit that a reorganization in the Naval Shipyards occurred in 1959-1960 which necessitated abolishing the Shop Analysts and Schedulers positions and which required the application of reduction-in-force procedures to determine the rights of those persons, including plaintiffs, holding such positions; they admit that prior to said reorganization the planning effort in the Naval Shipyards was a two step operation with the Planners and Estimators furnishing broad outlines of the repair and maintenance work to be performed and the Shop Analysts and Schedulers providing detailed instructions for said work, and that since the reorganization the planning effort has become a one step operation with the Planners and Estimators furnishing more detailed instructions than they formerly did. Defendants deny that the work of the Shop Analysts and Schedulers was a separate or independent function; deny that there has been a transfer of function within the meaning of applicable laws and regulations and deny all other allegations of paragraphs 7, 8, 9, 10, and 13 which are inconsistent with or immaterial to defendants' admissions herein.

11. 12. Defendants deny the allegations of paragraphs 11 and 12.

14. 15. Defendants admit the allegations of paragraphs 14 and 15.

16. Defendants deny the allegations of the first sentence of paragraph 16 and are not required to answer the conclusions of law of said paragraph.

17. Defendants Macy and Lawton deny that they have failed to accord to plaintiffs their rights with respect to employment with the United States, and admit the remaining allegations of fact concerning them.

18. Defendants deny the allegations of paragraph 8.

/s/ David C. Acheson
United States Attorney

/s/ Edward P. Troxell
Principal Assistant United
States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

/s/ Ellen Lee Park
Assistant United States Attorney

[Certificate of Service]

[Filed Dec. 13, 1961]

**STATEMENT OF FACTS PURSUANT
TO LOCAL RULE 9(h)**

1. The United States Navy established in its shipyards, effective after 1950, a Production and Planning Control System to conduct its planning program.

2. Under this system, employees in the shipyards who held the rating of Planners and Estimators (hereinafter referred to as P and E) were assigned the duty of making up preliminary plans for repair and maintenance work to be performed. A new rating, denominated Shop Analysts and Schedulers, (hereinafter referred to as A and S) was established and the employees who acquired this rating were given the duty of breaking down into detail the preliminary plans prepared by P and E.

3. The P and E received a higher rate of pay than the A and S.

4. Plaintiffs prior to 1960 were employed in the Naval Shipyards with a rating of A and S.

5. In 1960, because of a reorganization which was designed to reduce costs and prevent overlapping of effort in the Naval Shipyards, the detailed planning formerly done by the employees holding an A and S rating was merged with the preliminary planning done by the P and E, and the A and S rating was abolished.

6. In connection with the reorganization, a reduction-in-force procedure was applied to those in the competitive level of A and S.

7. A number of appeals were filed by persons affected by the reduction in force and a question common to all related to "transfer of functions." The Department of the Navy and the National Association of Naval Shop Analysts and Schedulers requested that the Civil Service Commission resolve said question in a pilot case. For this purpose, the Navy Department and the National Association of Naval Shop Analysts and Schedulers by stipulation of May 20, 1960 agreed that a group of appeals would be presented to the Civil Service Commission for a consolidated hearing at which both parties would be permitted to introduce oral and written evidence, briefs, etc., relating to the "transfer of functions" problem, with a view toward providing a record which would enable the Commission to make a ruling on this question which would be dispositive of the issue for all similar appeals in all regions.

8. Pursuant to the aforesaid stipulation, the National Association of Naval Shop Analysts and Schedulers selected six appeal cases from the Norfolk Shipyard and six from the Philadelphia Shipyard, which were, with the approval of the Navy Department, submitted to the Civil Service Commission.

9. The twelve cases submitted were those of the plaintiffs herein. Each plaintiff contends that the functions of the A and S were transferred to the P and E; that such transfer constituted a transfer of functions within the meaning of 5 U.S.C. 861 and pertinent regulations of the Civil Service Commission and of the Navy Department, and that he should have been permitted to follow the functions of A and S to P and E.

10. On August 3, 1960 a hearing was held before an Appeals Examiner of the Civil Service Commission with respect to the appeal of plaintiffs and the Appeal Examiner by decision of September 2, 1960 reviewed the evidence in detail and concluded that no transfer of function had occurred within the meaning of pertinent laws and regulations.

11. Plaintiffs by letter of September 7, 1960 appealed to the Board of Appeals and Review of the Civil Service Commission from the adverse decision of the Appeals Examiner.

12. Upon review of the appellate record, the Board of Appeals and Review submitted the case to the Commission for decision. The Commission on December 7, 1960 denied the appeal holding in part as follows:

"As to the facts, the Commission finds from the evidence of record that the function, the identity of which is the prime issue in this appeal was, and still is, the maintenance of planning and production control in each Naval Shipyard. * * * In reality the primary work of the Planners and Estimators and the primary work of the Shop Analysts and Schedulers were, prior to the reorganization, operating parts of a single function and not independent and separable functions. * * * In view of the above findings of fact, the Commission agrees with and affirms the conclusion of the Appeals Examining Office that no transfer of function occurred in the various Shipyards as a result of the reorganization so as to entitle the Shop Analysts and Schedulers to move into the Planning Departments where the Planner and Estimator positions were located before a reduction in force could ensue.

"Since it is established by the facts that a transfer of function did not take place, a further discussion of the law, regulations, or procedures governing the rights of employees in a transfer of function is not essential to this case. * * * "

13. Plaintiffs instituted this suit on March 10, 1961.

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan
Principal Assistant United
States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

/s/ Ellen Lee Park
Assistant United States Attorney

[Filed January 16, 1962]

**STATEMENT OF FACTS PURSUANT
TO LOCAL RULE 9 (h)**

The following statement of facts is submitted in support of Plaintiffs' motion and for the purpose of correcting and supplementing the statement of facts submitted by defendants.

1. There are eleven naval shipyards located along the Pacific and Atlantic coasts. Navy ships come to the shipyards for conversion, repair or alteration. The shipyard is divided into departments. The Production Department includes the shops which are each in separate buildings physically separated from the Administration activities. There are usually about 17 shops e.g. electrical, paint, woodwork, sheet metal work, structural, etc. The number of employees in each shop may run from 60 to 3000 in a large structural shop (CSC 182).

2. After 1950, applying the recommendations contained in an extensive study (1949) by the private consultant firm of Cresap, McCormick and Paget, the Bureau of Ships completed the establishment of a system known as the Production, Planning and Control Program, (Manual I-1), in order to bring modern efficiency to the shipyards.

3. The objective of the Program was to "obtain the optimum degree of control" and this was to be accomplished by providing for "a more detailed breakdown of work at the shop level utilizing shop planners trained to analyze and determine the best job methods" (Manual I-2).

4. Twenty-two hundred carefully selected employees from the shops were given special training to perform the new duties under the program (CSC 112-114) and a special rating was established known as "Shop Analysts and Schedulers" with a 20% differential in pay over shop rates.

5. Under the PP&C Program the Planning Department was responsible for authorizing "what" was to be done and the Production Department

1 - Known as PP&C.

2 - Navships -250-746.

was responsible for determining "how" and "when." (Manual II-3). This was a new program the essential part of which was job analysis and the program did not exist before 1950. (CSC 127)

6. The Shop Analysts and Schedulers were to serve in a staff capacity to the Master Mechanic in the Shops and

"They are responsible for breaking jobs down operationally for the purpose of developing standard operational estimating data, developing and standardizing best methods of doing the work, scheduling operationally, progressing the work, maintaining workload charts, determining assist and/or service trade requirements, and in general providing for better control over a shop's productive efforts." (Manual II-3)

The Planners and Estimators were to define "scope of work" by indicating in general terms "what" was to be done, e.g. "paint," "repair," "install" etc. (Manual II-3).

7. The Shop Analysts and Schedulers were physically located in the shops which were one-half to a mile distant from the administration buildings which housed P&E.

8. Of the Planning Dollar the Shop Analysts and Schedulers represented 51.7% or \$17,239,600; the Planners and Estimators 22.2% or \$7,400,000. (CSC 228)

9. By order of the Chief of the Bureau of Ships Nov. 17, 1959, the classification of Shop Analysts and Schedulers were to be abolished and a reduction in force for all in that classification was to be effected (CSC 218). This reduction in force was carried out during 1960 for most shipyards.

10. The function of the Analysts and Schedulers known as "preparation of line item job process cards" (that is detailed instructions to the shops as to "how" and "when" to perform the job) was given over to P & E.^{1/}

^{1/} Planning and Estimating Division.

Ninety percent of the time of the Analysts and Schedulers had been devoted to this activity. (CSC 114, 115, 178, 179)

11. The staff of P & E was augmented by as much as 50% by transferring or detailing Analysts and Schedulers to perform the job process work or to train P & E to perform it. (CSC 132).

12. In sample testimony at the Civil Service hearing, testimony showed that of 15 persons in one section of P & E, after reorganization, eleven were former Analysts and Schedulers and 85% of their time after reorganization was spent in doing the same work as they had performed in the Production Department before reorganization. (CSC 142). At Philadelphia the staff of approximately 100 at P & E was augmented by 69 Analysts and Schedulers on a permanent or temporary basis. (CSC 132).

13. It is conceded by the Navy and accepted by the Examiner that the preparation of job process cards by the Analysts and Schedulers was a "big new thing," that it was substantial, that there was a larger staff in A & S than in P & E before reorganization, that P & E is now augmented and that this work of the A & S was transferred to P & E (CSC 146, 148, 171, 172).

14. P & E since reorganization has appointed additional employees to perform the work transferred to P & E from A & S. The employees performing the work were not transferred with the function they were performing.

/s/ Donald M. Murtha
Attorney for Plaintiffs

[Filed Feb. 5, 1962]

**OBJECTIONS TO PLAINTIFFS'
STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL RULE 9 (h)**

Defendants assert that the material facts necessary for the disposition of the legal issue involved herein are set forth in their statement

of facts pursuant to Local Rule 9(h), and that the supplemental facts set forth by plaintiffs are immaterial. In addition defendants object to the following portions of plaintiffs' statement for the reasons specified:

Paragraph 10. The administrative record reflects that plaintiffs' witness stated that the scheduling of "when" is now being done in the "production engineering division". (p. 179) Consequently this paragraph is in error in stating that the duty of scheduling "when" was transferred to P and E.

Paragraph 10 and 14. Defendants object to the use of the word "function" in these two paragraphs insofar as it may be interpreted to mean "function" within the meaning of 5 U.S.C. 861. Clearly the word as so used in these paragraphs does not constitute "function" within the definition of the Civil Service Commission, upon which defendants rely herein.

Paragraph 14. Defendants object to this paragraph insofar as it may infer, as plaintiffs argue, (page 2 of their memorandum of points and authorities) that "new" employees were hired for P and E positions. The only persons eligible to be appointed to P and E positions after the A and S was abolished were employees of the Navy Yard who were qualified for the rating.

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan
Principal Assistant United
States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

/s/ Ellen Lee Park
Assistant United States Attorney

[Certificate of Service]

[Filed Feb. 5, 1962]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Defendants through their attorney, the United States Attorney for the District of Columbia, oppose the motion of plaintiffs for summary judgment for reasons set forth in their memorandum of points and authorities in support of their motion for summary judgment which is incorporated herein and made a part hereof, and for the following additional reasons:

Plaintiffs have alleged that the Civil Service Commission confined its decision denying plaintiff's appeal to the issue of transfer of function and did not consider the contention that plaintiffs are not entitled to a promotion, because, they say the latter contention is not legally sound. In the Analysis and Findings of the Appeals Examiner appears the following statement:

"Even if the contention of the attorney for the appellants is correct that some act of transfer was required, Section 20.8 of the Commission's regulations would require that the transfer of Shop Analysis and Schedulers be accomplished without change in tenure of appointment. In other words, they would have arrived in the Planning Division as Shop Analysis and Schedulers and in a reduction in force they would have no right to promotion to the position of Planners and Estimators. (Emphasis supplied, CSC rec. p. 29)

The Board of Appeals and Review after determining that a transfer of function did not occur held:

"Since it is established by the facts that a transfer of function did not take place, a further discussion of the law, regulations, or procedures governing the rights of employees in a transfer of function is not essential to this case." (CSC rec. p. 5)

Defendants respectfully assert that the foregoing statements on the part of the Civil Service Commission lend support to rather than in any way detract from the argument that plaintiffs are not entitled to be promoted.

Plaintiffs also assert that it is immaterial under 5 U.S.C. 861 that the P and E received more pay than the A and S. Defendants respectfully aver that for an A and S to move to P and E, a different grade with more pay, constitutes a promotion. 5 U.S.C. 861 gives no right to a promotion, but only requires a transfer to a job for which a veteran is qualified. Plaintiffs' witness at the Civil Service Commission hearing stated that the A and S were given an opportunity by the Bureau of Ships to qualify for the P and E by taking a test and that over 50 per cent of the A and S failed said test. (CSC rec. p. 123) Plaintiffs herein have not been discharged, as was the employee involved in the case of Feldman v. Herter, 107 U.S. App. D.C. 239, 276 F.2d 485, upon which they rely. Plaintiffs herein have received just what the Court held in that case that 5 U.S.C. 861 requires -- appointment to a position for which they are qualified.

Defendants assert that there was no transfer of function herein, and that if there had been, plaintiffs would not have been entitled because of it to a promotion. Accordingly, defendants respectfully move the Court to grant their motion for summary judgment and to deny that of plaintiffs.

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan
Principal Assistant United
States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

/s/ Ellen Lee Park
Assistant United States Attorney

[Certificate of Service]

[Joint Stipulation of Donald M. Murtha, Esquire, and L. Neal Ellis, Esquire, dated May 20, 1960, initiating pilot case before Civil Service Commission]

20 May 1960

Commissioners
U. S. Civil Service Commission
Washington 25, D. C.

My dear Commissioners:

A number of appeals have been filed with Regional Offices of the Commission and others are expected to be filed by Shop Analysts and Schedulers employed in the Bureau of Ships, Department of the Navy. The appeals arise from RIF actions resulting from a reorganization in the eleven Naval Shipyards and the abolition of the rating of Shop Analysts and Schedulers. All of the appeals present a common problem and for the purpose of expeditious handling, it is requested that this problem be resolved in a pilot case. For this purpose, the representatives of the Department of the Navy and of the National Association of Naval Shop Analysts and Schedulers stipulate as follows:

1. The question raised which is common to all, relates to "transfer of functions". The petitioners claim that, under the Veterans Preference Act, and the pertinent regulations of the Civil Service Commission and the Department of the Navy, where the rating of Analyst and Scheduler is abolished and functions transferred to a different location within the same activity, the employees performing those functions are entitled to be transferred with the functions. Petitioners maintain that a reduction in force action limited to the Analysts and Schedulers in such circumstances is contrary to the Act and the regulations are, therefore, unlawful.

2. In order to resolve this question before the Commission, the Association and the Department of the Navy will select six appeal cases from the Norfolk Shipyard and six from the Philadelphia Shipyard filed with the Regional Director of the Civil Service Commission for the Third District. The appellants in these cases will sign waivers of their rights to have their appeals heard by the Regional

Director and will agree to a transfer of their appeals to the office of the Head of the Appeals Examining Office in Washington, D. C.

3. The cases so selected will be consolidated and a hearing held at which both parties will be permitted to introduce oral and written evidence, briefs, etc., relating to the entire problem, with a view toward providing a record which will enable the Commission to make a ruling on the question of transfer of functions which will be dispositive of the question for all similar appeals in all regions.

4. Pending the outcome of the appeals within the Commission, the Commission is requested to instruct the Regional Offices to hold in abeyance other appeals in this matter.

5. Upon a final decision being made by the Commission, the Commission will forward their ruling on the question of transfer of functions to the Regional Offices and it is agreed that this decision will be dispositive of this question in the appeal cases brought by members of the Association.

6. This stipulation is not intended to preclude relief on grounds other than that of transfer of functions that may arise in individual cases throughout the various regions, e.g., factual questions relating to the number of years of service, nor to waive any rights employees may have to seek relief in a Court of Law following an exhaustion of remedy before the Commission, in the event that the decision of the Commission is unfavorable to the employees.

/s/ Donald M. Murtha
Attorney for National Association of
Naval Shop Analysts and Schedulers

/s/ L. Neal Ellis
Legal Counsel, Office of Industrial
Relations, Department of the Navy

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

14 Thereupon,

WILLIAM SPOONER

was called as a witness for the Agency and was examined and testified as follows:

EXAMINATION BY MR. ELLIS FOR THE AGENCY

THE WITNESS: I have some charts that I think would perhaps better explain what I am going to talk about.

EXAMINER ELLIOTT: You give us those as exhibits and that would be fine.

MR. ELLIS: Before you do that, let me hand up this instruction; that may be termed, if you want, a joint exhibit, Mr. Murtha, that you had requested we make that available and I think the Examiner also mentioned it, and we have no objection.

EXAMINER ELLIOTT: In other words, we will mark Bureau of Ships Memorandum Order 4850.14 as Joint Exhibit 1.

(Discussion off the record.)

EXAMINER ELLIOTT: Just to make this simple, I will call this Agency Exhibit 1. Make that Agency's Exhibit 1.

(Agency's Exhibit 1 was marked for identification and received in evidence.)

EXAMINER ELLIOTT: Now, let me ask you this question: Are you going to give us these charts as exhibits?

15 THE WITNESS: We will leave them or make copies of them for you as exhibits, sir.

EXAMINER ELLIOTT: All right. Fine.

You see, I will need them, because the record will not clearly show your organization. If you leave the charts, I think it would give us a clear picture that way.

THE WITNESS: I am not here as an expert on transfer of function, but rather I am here to explain what happened, what we did before and what we are doing today.

EXAMINER ELLIOTT: That is what we want.

THE WITNESS: I would like to show what the Bureau anticipates will be done in the future.

EXAMINER ELLIOTT: Let's start with the past.

THE WITNESS: In the before category or past, which merely puts it from 1954 to 1959, the work that people did in the various departments of the shipyard and in the forces afloat area. This (indicating) is a very simple flow process chart describing only those essential planning steps which deal with getting the work accomplished.

This is "old hat" to many of you, I know, and I hope you will bear with me, but our work-authorizing documents, the things that tell us what to do and provide us moneys to do it in the Naval shipyards in terms of repairing, altering, converting, or building ships, come from either the bureau concerned or the forces afloat. We received either from the bureau or from the type commanders in forces afloat, work authorizing documents with accompanying moneys to tell us what they want done to their ships.

In the planning department, in the design division specifically, we prepare plans, blueprints if you would care to call them that, and/or design specifications in the form of instruction books which pertain to specific pieces of equipment or machinery or structural electrical work to be done.

The people in the P&E Division, Planning and Estimating Division, after reviewing the work-authorizing documents, reviewing the plans, develop, for lack of a better word, sales estimates. These are preliminary estimates, without having seen the ship at this stage of the game, as to what the work is going to cost in terms of dollars, as applied to labor, overhead, and material. This is their best guess very early in the game.

To help the other people in the shipyard, the planning department prepares a work booklet. This is a list of the authorized work items, and I say "authorized work items" because, well, we may have a long list of authorized work. Moneys may only allow us to go a certain distance down on this priority list of work.

So the planning department then tells the production people, these are the jobs we think you are going to receive on this particular ship. They tell them the work scope as best they can and the man-days involved.

17 Well, this helps the people in the central scheduling branch of the production analysis division to prepare a preliminary work schedule. It also helps them to refine their long-range work load forecast, since this is better information than they have had before on which to base manpower requirements.

With this sort of information in hand in terms of what is to be done, and with the production people determining when it is to be done, they can then provide and were in the "before" period providing back to the planning department the required dates for the delivery of material, the issue of the plans, the issue of the job orders, and the sequences of work for the trades involved in doing this work.

Upon receipt of this information, the planning department, who had also been not idle, but looking over the work to be done, would reserve material, reserve material in the sense they would tell the supply department, we think we are going to have to have this material; if you don't have it in your supply system, go ahead and have it available. This is not a direct charge to the customer at that time.

Now, as the time for the overhaul becomes closer and the ship would actually arrive, and actually prior to arrival, if possible, the planning department accompanied by some production people on special occasions would take the list of work that they had received, blueprints that were
18 available for that particular ship, and go out and inspect the ship to see if the plans really described the condition on the ship, because no two ships are alike.

They mark the plans where they differed, determine the material requirements, determine the work content, and come back to the shipyard and issue a firm work booklet that says we have taken a look at this ship now, we are more sure now of what we have to do than we were in the past, our estimates may have been based on worse conditions before, now we are actually basing them on known conditions, and this is now, Mr.

Production Department, what we think you will have to do when this ship arrives; at which time the production department says, fine, we will now come up with a final schedule which reflects this later and better thinking.

They also refine the workload forecast.

In all the foregoing steps documents have been sent to the shops, shop heads, as information, to let them know also the type of work that was coming.

When the final schedule is issued, it also provided more realistic dates for the delivery of material, plans, issue of job orders and work sequences.

At this stage of the game, under the old system -- and by "old" I am talking about prior to November 1959 -- the planning department prepared a broad type job order that described in general terms the work that was
19 to be done, the shops that were involved, and the man-days of work that they estimated would be required to accomplish this work.

Some people will quarrel that they didn't issue broad type job orders, that they issued detailed job orders. They issued both. You have eleven shipyards; you are bound to have variations in the work content of these work-authorizing documents. But I would like to make very clear that the Bureau's intent and, as stated in the Procedures Manual for Naval shipyards, was that the planning department would issue broad job orders, merely define enough scope, enough detail so that the scope of work was understood by the shops and people who received these broad type job orders.

MR. ELLIS: I don't like to interrupt, but do you happen to have with you any samples of these sort of things, like a job order?

THE WITNESS: Yes, sir.

MR. MURTHA: Could I ask a qualifying question here?

THE WITNESS: Yes, sir.

MR. MURTHA: This is just for information. Can we find this chart here in some of your publications? Where did this come from?

THE WITNESS: This is an original effort and it is a paraphrase of the gobbledygook that you find in Naval publications and Naval instructions. I have condensed it down into the commonplace things that people do.

20 MR. ELLIS: Mr. Murtha, this was prepared at my request. I thought it would be much better to have a graphic explanation so we laymen could understand the thing, instead of digging it out of all these papers.

THE WITNESS: I refer you, Mr. Murtha, to the timetable that Mr. Robertson has. This is the type of thing you get into here, if I was to give you a full, blown-up version of this same chart.

MR. MURTHA: I think what he has relates to -- this is the "before".

THE WITNESS: This is an abbreviated version of that for explanatory purposes.

EXAMINER ELLIOTT: Let's let him go on with his explanation and then we will get some examples.

THE WITNESS: These job orders were essentially a piece of paper that told the shops what to do and then gave them the man-days to do the work. Accompanying the job orders usually -- not always, but usually -- were what we called material and progress sheets which listed the material involved on these particular jobs. This is not always true, but in many cases was true.

EXAMINER ELLIOTT: May I interrupt? I will try not to do it often. Will you tell us when this hits the shop analyst?

MR. MURTHA: You see, this is all before they ever had analysts and schedulers.

21 MR. ELLIS: No, this is during the period.

THE WITNESS: We will get to the job Analyst and Scheduler.

MR. MURTHA: The sign --

THE WITNESS: We are talking about time in two different ways. You are talking about dates; he is talking about the time period prior to the start of an overhaul. Right?

EXAMINER ELLIOTT: Yes. I think what Mr. Murtha's problem is, this says before 1954, and this should be before 1954 to 1959.

THE WITNESS: We issued an instruction in November 1959, so what I have in this chart describes the way we were supposed to work between those dates.

MR. MURTHA: Yes.

THE WITNESS: Timewise in issuing job orders, Mr. Elliott, this could have been as early as ten days prior to arrival of the ship, forty days after arrival of the ship, depending upon the type of work that was involved.

Now, the alteration work normally came out earlier, the repair work normally came out later. There is no set time I can tell you these people in the production department would get these job orders. We have on different occasions stressed, and officially once I believe in a Bu Ships notice, to the planning department that they should issue these as early as
 22 possible prior to the arrival of a ship so that the shop analyst and scheduler would have a good opportunity to do a good detailed job breakdown of the work. So, if you push for early issue, accepted what they have been able to do, in many cases, you can't blame the planning department for late issue of work. In many cases ships coming back from the Mediterranean would come right straight in a shipyard with no opportunity to board for this pre-arrival inspection, which I mentioned earlier, which is so easily done on the West Coast where people can jump up and down the Coast and catch these ships before they arrive in their yard for overhaul.

Well, the job orders were issued by the planning department, and went over into the shop planning sections of the shops.

Now, again, I have listed I think most of the things that the shop analysts and schedulers did, perhaps not all, but those that are germane to the situation today.

Upon receipt of the job order -- I am eliminating the step where the clerk time stamps the job order in and hands it to the supervisor and all the interim steps -- the shop analyst and scheduler prepares a process card. This process card was the shop analysts and schedulers worksheet in which he described in chronological order the details of his particular job.

I think at this stage of the game I would like to break out a sample
 23 job order, sample process card, and sample instruction card to show you what we are talking about when I talk about process cards, assign,

start and completion dates, standard manhour allowances.

EXAMINER ELLIOTT: Very good. You are going to give these samples to us?

MR. ELLIS: We will introduce them. We will offer them.

THE WITNESS: What we have prepared here is not new. We have used it on different occasions to explain the process of planning under the old method.

I have a very simple job order as issued by the planning department. This is the job --

MR. ELLIS: Maybe we ought to start marking these.

EXAMINER ELLIOTT: Yes.

MR. ELLIS: Let's mark these as Agency Exhibits. Did you start with one?

EXAMINER ELLIOTT: Let's use 1 and 2 on both sides. Agency's Exhibit 2 will be the sample job order and it will be this document here.

(Agency's Exhibit No. 2 was marked for identification.)

THE WITNESS: This is a very simple job and was picked because it was simple and fairly easy to explain.

On most of our destroyers, in fact all of our destroyers, we have to have facilities for storing our vegetables, onions, potatoes. So the Navy
24 has a vegetable locker which is a standard locker installed on all of our destroyer vessels. This locker used to be made of steel; lately we make it out of aluminum. Under the old concept, under our old system, these steel vegetable lockers used to corrode quite badly because of the weather, salt water, and they would have to be replaced. Now we are replacing them with aluminum. This describes when the old steel locker has deteriorated from the weather and has to be replaced with an aluminum one, and this is a typical repair job.

Under the old system -- and by "old" I am talking about the period from 1954 to 1959 -- the planning department issued this job order, which says:

"Remove and scrap corroded vegetable locker, main deck, Frame #45 starboard, fabricate and install new aluminum locker; BuShips Plan 534-690312, three-bin type, same location."

Now, on this job order the planner and estimator listed the shops involved, the sheet metal shop to do the majority of work, as indicated by the fact that they gave them seven mandays; Shop 11 to provide some chipping service for which he gave them one day; Shop 26 to provide the welding, which he gave them one-half day; Shop 71 to paint as requested, one day; Shop 72, the rigging shop, to provide rigging service for which they received one-half day.

- 25 Now, this was the extent of the type of breakdown that was anticipated the planning department should issue out of the planning department to the production department to start the work rolling.

Upon receipt of this job order in the shop, and we are moving now across the chart from the job order over to the shop, the first line says "Prepares process cards." This large sheet is a sample process card, describing the --

EXAMINER ELLIOTT: That will be Agency Exhibit 3.

(Agency's Exhibit No. 3 was marked for identification.)

THE WITNESS: -- describing the same work operations, the same operation of replacing the vegetable locker, but listing in chronological order those things that had to happen in order to facilitate completion of this job.

For example, the first instruction was to fabricate one aluminum vegetable locker for which a standard BuShips plan number was given and the type and the size and the instruction said "deliver to vessel upon completion." This work was assigned to Shop Section 1, in the sheet metal shop.

The estimated manhours were provided by the shop analyst and scheduler of 40. Now, this 40 manhours is supposed to represent what the work should cost. I would like to make a point of this because the planner and estimator's job, when he made this sales estimate, was

estimating what the work would cost; not what it should cost, but what it
26 would cost. The should-cost figures were placed on this process
card by the shop analyst and schedulers.

MR. MURTHA: That is under "Est."; is that the column you are
talking about?

THE WITNESS: Estimated manhours represents what the work
should cost, recognizing that if you had some lost time, that if it took ex-
cessive personnel time, had some trade delays, it would be more; or if
things went real smoothly for you, it could be less; but if everything went
fine, people worked at a normal pace, you would get that job done for forty
hours.

Now the planner and estimator on this particular operation probably
figured forty plus the normal amount of delay time and personnel time
that has occurred.

EXAMINER ELLIOTT: May I ask a question at this point, so I will
understand the planning and estimators function as you have described it.
Would you say the planner and estimator figured out the probable dollar
cost, whereas this 40 hour figure made by the shop analyst and planner
is sort of a Chilton Manual kind of thing? This is a flat rate cost for a
job of this kind?

THE WITNESS: We haven't had a flat rate manual of the type you
have described until very recently. In the past we have had to rely on
past experience or return cost information on which to predicate these
estimates.

27 Now, the planner and estimator went through the same steps mental-
ly that the shop analyst has gone through here (indicating) in order to ar-
rive at his total man-day figure. He did not write the same amount of de-
tail in order to process this work through the production shop.

Now, on the process card -- and this is a pretty good example, I
think, of a very well written process card -- the shop analyst and sched-
uler told shop section 1 to build a new locker.

He told Shop Section 4 on his next instruction to remove the old one
where it was and what to do with it, deliver it to scrap. He told Shop 11

at the same time that these other people were going to remove the existing steel locker, to provide chipping service to free the welded angle iron legs from the deck.

EXAMINER ELLIOTT: I have another question.

THE WITNESS: Yes, sir.

EXAMINER ELLIOTT: Does more than one shop analyst make up this thing? There are different trades involved here?

THE WITNESS: In this particular case one analyst would write this complete job.

EXAMINER ELLIOTT: In this particular case. But there would be cases where several analysts would work?

28 THE WITNESS: It is conceivable several analysts could work and would work on one job order, particularly our large-scale alterations.

The next step, the shop analyst and scheduler told the rigging shop to provide rigging service to lift this heavy steel locker off, since it weighed more than what people were allowed to lift manually. They told the rigging shop where it was and who to contact.

They told Shop Section 4 to install one aluminum locker, which was going to be delivered to them by the inside shop, and where to install it.

It told Shop 26 to provide a welding service to arc weld the new locker to the deck, where it was going and who to contact.

Last, they told Shop 71 to paint this locker.

Now, the shop analyst and scheduler who in the shop planning section was responsible for scheduling this work, took a look at the centrally developed schedule prepared by the production analyst division, final schedule, and fitted these internal shop dates and intra-shop dates within the broad framework of the dates provided by the central scheduler. So the people in the field would receive what to do, where to do it, when to do it, and an estimate of how long.

Now they received this information, not on this process card, which as I stated before was the shop analyst worksheet, but on an instruction

card, which was prepared in either triplicate, quadruplicate, or even in
 29 quintuplicate in some cases. These instruction cards were typed
 by --

MR. ELLIS: Mark that Agency's Exhibit 4.

EXAMINER ELLIOTT: It will be so marked.

(Agency's Exhibit No. 4 was
 marked for identification.)

THE WITNESS: (continuing) -- by a clerical person usually, and
 dispatched to the leading man who in turn used them as his reference copy
 of work on hand to do and also the mechanic's copy as a written document
 to give the man to obviate any oral misunderstanding when he assigned the
 work.

One other thing that is on our chart here and I should mention -- I
 think we should mention them all -- is that in the process I have just de-
 scribed, the shop analyst prepared the process card, assigns start and
 completion dates, assigns standard manhour allowances, prepares in-
 struction cards, and this is perhaps a literal interpretation, he didn't
 really prepare them in one sense but he did in another. They were typed
 by a clerk, files were maintained of process cards either by analysts or
 clerks, files of instruction cards were maintained either by analysts or
 clerks in a particular file form. By this I mean they were filed by com-
 pletion date and this was a self-cleansing file, so as these were returned
 completed by the leading men they were matched and copies thrown out of
 the file; therefore, purged to give you a physical progress of work check.

30 The shop analyst requested inter-shop service. For example, ask-
 ing Shop 11, Shop 72, or Shop 26 to provide service to them on this vege-
 table locker job is an example of this. They schedule intra-shop work.

Now, on a sample progress card, you will note that Sections 1 and 4
 received starting and completion dates for their portion of this job. When
 a particular work operation fell behind schedule and the leading man in-
 formed the analyst of this, and no corrective action could be taken, a de-
 linquency report was submitted to higher authority on an inter-shop basis.
 Whenever a following shop, if there was a following shop, would be affected

or when an end date on the central schedule would not be met, in addition to delinquency reports the shop analysts and schedulers prepared and maintained for the shop analysts work load data in the form of a work load book. It showed the master work in hand, and they did this by taking the number of manhours, say for instruction No. 1 on this processing card, 40 manhours, instruction 1 was between 15 and 112 and prorating this between those days in a log book. Then at the end of the day and end of the week, adding them up vertically and thus showing the work load in hand, planned work load in hand to do for any particular section of the shop or for the total shop if he chose to add the individual sections together collectively. So they maintained shop work load data and obviously they performed the work at the line level.

31

Now, this is essentially the way the work flowed through on the regular overhaul in one of our Naval shipyards between 1954 and 1959.

MR. MURTHA: May I suggest that we give the chart a number.

MR. ELLIS: It already has one, as Agency's Exhibit 1.

EXAMINER ELLIOTT: I am afraid we did not give it a number.

MR. ELLIS: What was Agency's Exhibit 1?

EXAMINER ELLIOTT: We will give it No. 5.

(Agency's Exhibit No. 5 was marked for identification.)

MR. MURTHA: The testimony up to now has been in regard to Agency's Exhibit 5.

THE WITNESS: This is the "before" situation, as best as I can describe it. I may have left out some of the details and I am sure I have, but only with the intent that they are extraneous to our particular meeting here.

EXAMINER ELLIOTT: Now let's hear from you on the "after."

THE WITNESS: Yes, sir.

(Agency's Exhibit No. 6 was marked for identification.)

THE WITNESS: I am just going to talk about what happened after, and the reasons why I think are not my business. Right?

32 MR. ELLIS: Right. We are talking about the period of 1959 through 1960, and I will qualify this 1959 for Agency's Exhibit 6 as starting November 1959 and continuing on through the present date.

The concept of "after" in the sense of what shipyards are supposed to do now, planning-wise, processing the same particular job and same type of work has not changed down to this dotted line.

I will put the other chart up, if I may, to show you they are identical.

These charts, the charts down to the dotted line are still the same. We still get customer requests, we still prepare plans and design specifications, the leading men still make the sales estimates today, as they did before, we still have pre-arrival inspection, we still reserve material, we still issue firm work booklets, we still have preliminary schedules, forecasts.

Any questions on this down to this line?

What we really have to discuss is the difference between what happened before and after below the line. This is where the major difference occurred.

Under the new concept, we have realigned the work performed in the writing of job instructions to the production department. We have realigned the manner in which it was scheduled primarily with the intention of reducing costs. Costs have arisen. We are alarmed. We are trying to bring
33 them down.

The manner in which this new system will work is essentially this. This will be Agency's Exhibit 7.

EXAMINER ELLIOTT: So marked.

(Agency's Exhibit No. 7 was marked for identification.)

THE WITNESS: What I have here is this same vegetable locker job. I don't want to beat it to death; it is a good example, showing how it will be written under the new concept and by whom, format-wise, and content-wise.

You may note that it resembles both the job order and the process card. This is by intent. The job order and process card are married.

We now have the planner and estimator writing a more detailed job order, more detailed than he did before in the job order sense, and less detailed than the shop analyst and scheduler used to write. It is an in-between document that describes enough of the work content, provides sufficient information that the production department can live with it and get the work done. It reduced the number of pieces of paper down from three before, under the old system, to one today.

MR. ELLIS: I think you better refer to these three pieces of paper as Agency's --

THE WITNESS: 2, 3, and 4; as opposed to No. 7.

34 So the planner and estimator, since he had to go through the mental thought processes before to arrive at the man-day estimate and the knowledge of the work content under the old system, is now writing down what he did before mentally on a first-to-know basis. As he is the first man to know, now he is not only thinking about it, he is writing it down, and we have asked them to write it in such a way, it ties in with the way our process cards used to be written in chronological order describing the operational steps of the job. He doesn't schedule them, he writes down what is to be done.

He has already received the work sequences information from the production engineering division. This is a change, by the way. It used to be Production Analysis Division; now it is Production Engineering Division.

He writes these job orders in such a way that when they are received on a master or duplimat format in the production department, it is able to be scheduled.

The job order comes over to the central scheduling branch code 375. The central schedulers assign inter-shop starting and completion dates, and I have "duplicates and distributes." Now, this duplicates is true in some yards, if they have facilities to do this, and in other yards it is not true, because it has to be sent somewhere else for duplication.

In any event, the next step is duplication and distribution of the job orders complete with start and stop dates. A copy goes to code 376, who

35 prepares shop work load data and in the majority of our yards now this is done on a computer, this one piece of paper, either E&M cards or a punch paper tape are prepared for later processing in the high-speed computer. The computer then furnishes section or shop work load data as desired for the time periods desired by the individual activity.

When the job order goes to the shop, they perform the work. The analyst and Scheduler function is to receive and route these job orders --

MR. ELLIS: You mean analyst and scheduler?

THE WITNESS: I beg your pardon; the shop planners. When they receive the job orders, have a routing function to the person concerned, they request minor assistance. They schedule the intra-shop work -- I am not going to pass this over lightly, because I think the shop planners have a fairly good-sized function in here -- this work involved in scheduling intra-shop work varies between our shops.

For example, in the machine shop they receive a big pump, and you disassemble the pump in one section. When these pieces start flying to the various parts of the shop, going from section to section, they have to have route tags, this being obvious. Route tags we had before 1954; we had them during the period of 1954 to 1959; and we are going to have them from 1959 on out. This is a function of the shop planner, to prepare these

36 route tags and send these pieces of equipment to the various sections concerned.

Submitting delinquency reports is still a shop requirement today as it was yesterday.

The should-cost standard manhour allowances are placed on the new job order by the planner and estimator. In other words, he determines both the will cost for sales estimating purposes and the should cost for production job order purposes.

The start and completion dates are assigned intershop-wise by the central scheduling branch.

The work load charts are maintained for the most part on either the E&M equipment or on computers in most of the shipyards.

This essentially covers the old and the new, sir.

EXAMINER ELLIOTT: I have a few questions.

Now, in this work chart here, it appears to me that some of the work performed by the shop analysts and schedulers is now in the planning department and now in the production and engineering division. Is it in two places?

THE WITNESS: Actually, sir, let me put it this way: We used to have some people in the shops who did nothing but methods and standards work. They used to think they were assigned that way. In some yards they were, one or two people did nothing but standards work. Today this is not true.

37 **The methods and standards function has been relocated and is re-aligned into the production engineering division. Now, we have also at the same time the shop standards people work, which was transferred. They transferred the industrial engineer function out of the shop superintendent into production engineering division. We took the industrial engineering work which was up in management planning review department and put it in production engineering division so we had all of our industrial engineering talent in one basket, so to speak.**

MR. ELLIS: Maybe I could help clear that up.

Did you have three major things that the shop analyst and scheduler did at one time? Do you have any descriptions of their duties? I think we are going a little ahead of ourselves.

THE WITNESS: This is a worksheet I made up for myself. Again, I could have copied from the strict Bureau directives and describe what people did, but chose not to, because I felt that putting this down -- you would be better able to understand it.

EXAMINER ELLIOTT: This will be 8-A, 8-B, and 8-C.

(Agency's Exhibits No. 8-A, 8-B, and 8-C were marked for identification.)

38 **MR. WORKMAN:** 8-A is job planning; 8-B is scheduling work; and 8-C is method and standards work.

THE WITNESS: What I tried to do with these exhibits is to describe in real simple terms the items of work that people did, either planners

and estimators, central schedulers or shop analyst and scheduler, or shop planners, under the old and under the new concept in giving both periods before and after, and a comparison of the duties that are related again to this subject on hand.

Again, admittedly, I have left out some things that are not too pertinent, but I would be glad to hand them in if someone thinks they are.

MR. ELLIS: Could you just elaborate a little bit, Mr. Spooner, on Agency's Exhibit 8-C? In other words, what was 8-C --

THE WITNESS: Methods and standards work?

MR. ELLIS: Yes. Give us a before and after situation. I think it would be relatively simple.

THE WITNESS: Before on methods and standards work, we had a standards branch in practically every yard. This standards branch was located in the production department and production and analysis division.

The standards branch did a lot more than the things I have listed here, but these are the key ones. They developed procedures, methods, performance required, and furnished guidance and assistance in the administration of the production department for production planning and control program.

39

These other things are pretty important, but the important thing, I think, that we are talking about now, and which most concerns the people in this room, is what the shop analyst and scheduler did. Before they developed standard estimating data under the guidance of the standards branch. They worked hand in glove as a team. But with the standards branch taking the lead for the most part. The shop analyst and scheduler and most, but not all shipyards conducted work sampling studies as assigned. They conducted methods improvement studies as assigned.

Under the new concept, and following instructions issued under 4850.14 -- this is the November instruction, Agency's Exhibit 1 -- the shop planner no longer has responsibility in this methods and standards area. This has been realigned and assigned to the methods and standards branch and staffs are being developed accordingly in each shipyard.

As an example, I have -- perhaps Mr. Robertson can check me out on this -- there used to be seven people in the Philadelphia Naval Shipyards in this methods and standards branch. I understand now they are approaching the total of thirty in that vicinity. A large number of these people are former shop analysts and schedulers who have had this same methods and standards experience in the shop. But today, no responsibility

40 for the shop planner in the area of methods and standards other than his boss saying, "You work with these people on special assignment, if they come in to study a job."

MR. ELLIS: To elaborate a little more, then, Mr. Spooner, on Agency's Exhibit 8-A, which is job planning --

THE WITNESS: Job planning?

MR. ELLIS: Yes, sir. The before and after situation.

THE WITNESS: In the before situation the shop analyst and scheduler worked from job orders, developing chronological job breakdown. This is the job analysis on the process card which we went through and which we discussed before with the process card. They assigned the work operation numbers and these were the instruction card numbers that appeared in the lefthand column of that Agency Exhibit 2. They assigned should cost manhours allowances, prepared inter-shop requests for assistance to other shops and/or trades, maintained section and shop work load data, maintained files on work in process, ordered and expedited material, and by this I mean they ordered material directly from the supply department in many cases, but not all. They dispatched the work in terms of handing the work packages to the supervisors concerned, provided the master mechanic or the foreman, quartermaster or other line supervisor concerned with a progress of work. They processed and investigated the delinquency reports that were submitted by line supervisors when an in-

41 struction card was in jeopardy of missing its completion date.

Under the new concept, or the after period -- we are speaking now of after November 1959 -- the shop planner receives and dispatches the job orders as they are written by the planner and estimator. In other words, he does not make a process card, nor are instruction cards typed

on that job order. He does look at the job order. He does look at the material sheets to find out if the planning department has ordered sufficient material. If the planning department has not ordered sufficient material, they normally -- and I use the word "normally" and I qualify this because it works different ways in different shipyards -- normally notify P & E of oversights.

Now, again, in the Norfolk Naval Shipyard I know that the shops made to order material directly from the supply department with their own stub requisitions.

In the Philadelphia Naval Shipyard I know that the stub requisitions for the most part are prepared in the planning department, but it may be prepared in the shops, but are always sent through the planning department for approval prior to being sent to the supply department as a requisition.

So we have various procedures as we have different yards.

EXAMINER ELLIOTT: Would it be a fair statement of fact to say that the shop planner still performs much of what he did as shop analyst and scheduler?

42 THE WITNESS: No, sir.

EXAMINER ELLIOTT: No?

THE WITNESS: I would not say that would be a fair statement. Based on the stated instructions to the shipyards. Except I think we have to recognize there are exceptions to all rules. We granted Portsmouth Naval Shipyard the right to retain certain of their planning functions in the planning department, in the production department, in order that they would not jeopardize the completion of the SS593 or the 602. These are two submarines well under construction, approaching completion, which the shipyard commander felt if he changed horses in the middle of the stream he would jeopardize the completion of his ships. He said there is so much paper in terms of these process cards, job orders and construction cards out on these two ships, I just don't want to back off at this time, can't I please proceed until we are done. The cost to change over would be prohibitive. We said yes, so we have an exception. People in Portsmouth are still doing shop analyst duties.

EXAMINER ELLIOTT: And people can remain in Kittery.

THE WITNESS: Portsmouth people are in Kittery, Maine.

EXAMINER ELLIOTT: Now the shop planner, where the thing was changed, is this a fair statement of fact: He still has some of the duties he performed as shop analyst and planner; is that not so? In other words, you haven't taken everything away from him?

43 **THE WITNESS:** I would say he still receives and dispatches all the job orders and plans of the supervisory force. I know if I was a shop master, I would make darned sure I had my shop planner in charge of the plans to be sure they were maintained in an orderly fashion and kept up to date. They review the job orders to be sure there has not been an oversight on the material.

This pre-staging of material and packaging of work is still the responsibility of the shop planner today as it was between 1954 and 1959 and even prior to 1954, back in the days of 1940s, when our shop planner's job was to see that the people got the tools, the materials to do the work. This was essentially the job written into the job description at that time and still is.

EXAMINER ELLIOTT: Is Kittery, Maine, and Portsmouth the only places where the old situation still exists?

THE WITNESS: I have been in four yards quite recently. People I worked with have been in the others with the exception of Puget Sound. Puget we can't speak of. I would say that all yards are in a transition period of cutting over to the new system. There may be some instruction card preparation going on in some yards where the transition is not complete, but if so this is only because of the washout that has to take place as you move from one system to another. And it is not by intent, with the ex-

44 **ception of the two ships that I mentioned in Portsmouth.**

EXAMINER ELLIOTT: Do either of you gentlemen want to inquire?

EXAMINATION BY MR. MURTHA FOR THE APPELLANTS

MR. MURTHA: Would you, in just a word or two, state what the purpose and objective of the production, planning and control is?

THE WITNESS: Certainly. I will be glad to.

A production control system is designed to insure that the essentials of getting work done, the men, the materials, the money, are all put together in an efficient manner so that you produce a quality, economical end product. That is not what the industrial engineering text books will tell you, but this is the way I feel about it.

MR. MURTHA: And this program was inaugurated along about in 1954?

THE WITNESS: I would say earlier than that, sir. Actually, the first steps were made in 1952.

MR. MURTHA: Now, just to make this perfectly clear, let me ask you one more question. The Bureau of Ships has not abandoned its objectives that you have just outlined, which you ordinarily describe as the function of the production, planning and control?

45 THE WITNESS: On the contrary, we feel that we have reinforced the production control system in every yard and that it will perform better and more economically than it did in the past.

EXAMINER ELLIOTT: At this point I perhaps ought to interject the thought, and I think you will understand it, I will not try to elicit efficient or inefficient, we will not cover that issue.

MR. MURTHA: No, I merely wanted to have the record clear that everybody was agreed that this reorganization was not intended to abandon the objections of the production planning control program.

MR. ELLIS: We will so stipulate.

MR. MURTHA: Yes.

EXAMINER ELLIOTT: Do you want to inquire?

MR. ELLIS: Nothing further. We have more testimony from Mr. Spooner later.

EXAMINER ELLIOTT: I was thinking along these lines. I wonder if there is any basic dispute as to what happened? I wonder if we could not save some repetitious testimony?

MR. MURTHA: We will try to eliminate any repetitious testimony.

MR. ELLIS: I would like to offer all of these exhibits right now, so appellants can refer to them, if you like.

EXAMINER ELLIOTT: All right; fine. In fact, you might develop your whole picture out of Mr. Spooner, if you like.

46 MR. ELLIS: That is my reason for offering them so appellants may use them, if you like.

EXAMINER ELLIOTT: Agency's Exhibits 2 through 8-A through -C are received in evidence.

(Agency's Exhibits 2, 3, 4, 5, 6, 7, and 8-A through -C were received in evidence.)

MR. ELLIS: That is all we care to offer from Mr. Spooner at this time.

EXAMINER ELLIOTT: Do you think it might be well at this point to just drain Mr. Spooner of everything you want to bring forth?

MR. ELLIS: No, I wouldn't like to close the testimony of Mr. Spooner. This was offered for the convenience of the parties.

EXAMINER ELLIOTT: Do you have someone from your personnel department with you?

MR. ELLIS: Yes, sir.

EXAMINER ELLIOTT: I would like to exercise my prerogative and ask a few questions to complete this picture.

(Discussion off the record.)

EXAMINER ELLIOTT: I think everybody here understands Title 18 of the U. S. Code denounces any false testimony on a matter pending before a government agency, and we do not swear witnesses here. You all understand that.

47 Thereupon,

ROBERT WORKMAN

was called as a witness for the Agency and was examined and testified as follows:

EXAMINER ELLIOTT: As a result of this change Mr. Spooner has just described, were there new positions created that did not exist heretofore?

THE WITNESS: New positions? Well, there were additional positions that were established that did not exist.

EXAMINER ELLIOTT: In other words, we always had the planner and estimator?

THE WITNESS: We always had planning and estimator positions in the planning and estimating division.

EXAMINER ELLIOTT: Before the change, what did the planner and estimator earn?

THE WITNESS: Planner and estimator? Well, generally speaking, his base wage was 25 percent above benchmark level of our trades.

EXAMINER ELLIOTT: That is still true today?

THE WITNESS: That is still true; no change in that.

EXAMINER ELLIOTT: Now the planner and estimator positions have increased in number?

THE WITNESS: There has been an increase in number. I can't tell you the exact increase. It has varied by shipyard, depending upon how many they need.

48 **EXAMINER ELLIOTT:** Now the shop analyst and planner, what did he draw as pay?

THE WITNESS: Shop analyst and scheduler? His base wage rate approximated 20 percent above the benchmark level; in other words, five percent, generally speaking, less than the planner and estimator.

EXAMINER ELLIOTT: What you have done is abolish the shop analyst and scheduler position?

THE WITNESS: As a result of this realignment of work, the shop analyst and scheduler rating as such has been abolished in all yards except as Mr. Spooner said, Portsmouth.

EXAMINER ELLIOTT: Some of the duties of the shop analyst and scheduler position remain in the shop planner position?

THE WITNESS: That is true.

EXAMINER ELLIOTT: Some of those have been transferred to P&E?

THE WITNESS: Some of the duties, yes, sir.

EXAMINER ELLIOTT: Thank you.

Do you want to go ahead?

MR. MURTHA: You are clear about this meaning of "above benchmark"?

EXAMINER ELLIOTT: Yes.

MR. MURTHA: Very well, I would like to call Mr. Robertson.

EXAMINER ELLIOTT: Let's take a five-minute recess.

(Recess)

49 **EXAMINER ELLIOTT:** Are you ready to go ahead, Mr. Murtha?

MR. MURTHA: I call Kenneth Robertson.

Thereupon,

KENNETH ROBERTSON

was called as a witness for the Appellants and was examined and testified as follows:

EXAMINATION BY MR. MURTHA FOR THE APPELLANTS.

MR. MURTHA: What is your name?

THE WITNESS: My name is Kenneth Robertson and I am the national president of the Naval Shop Analysts and Schedulers Association. I am employed at the Philadelphia Naval Shipyard, presently rated as a leading man welder. I had been rated analyst and scheduler during the period of 1954 to 1955, receiving a reduction in force notice, at which time I filed an appeal and not named as the twelve appellants though in this particular hearing.

I would like to present some background material relating to the position known as "analysts and schedulers" and I hope that it may not seem too repetitious to you, having reviewed some of the positions taken by the Navy in their various memorandum, but to relate in somewhat a simple layman language normally as our people would speak it.

I had the opportunity, late in 1955, from my local shipyard commander to visit all the shipyards on the West Coast, including Pearl Harbor and the Repair Facility at San Diego, and to see during this
50 visitation some of the workings of the analyst and scheduler in the production planning control system. This method of making the job breakdowns on the process cards and how the systems were run in a somewhat simple fashion in the shipyards, not being a qualified expert as Mr. Spooner, but, nevertheless, getting the interpretations firsthand from our people employed in these shipyards. So this would not only just be hearsay on my part as an organizational representative, but seeing it firsthand. I also visited the East Coast shipyards and, at that time, we were engaged in compiling information and data for the Chief of the Bureau of Ships who had established a panel called "SCAP." This panel was devised to seek ways and methods of obtaining ideas in reducing the cost, the rising costs, that were mentioned earlier, throughout the naval shipyards.

We as an organization worked diligently to find many avenues to reduce this cost. Primarily the paper work was also one of the biggest items discussed and as was pointed out here reduced from three to one. Some of these things we have stated many, many times and, of course, hoped that the Bureau of Ships would come up with something to eliminate a lot of this paper work, but not necessarily eliminate our jobs. But to go on from that, and not go into great details and background, we would like to feel as analysts and schedulers we played a major role in the job planning breakdown. In the shop as an analyst and scheduler, we did,
51 as you saw in the exhibits presented here before, write a detailed job breakdown from a very sketchy piece of paper, Exhibit 2, which was sent from the Planning and Estimating Department. Agreed that this

was given to us and the necessary plans, then the analysts had to go to work and break down the detailed plan to tell the shop involved and the mechanic involved just what work was to be accomplished and in what sequence it was to be accomplished.

MR. MURTHA: I think it might be helpful, Mr. Robertson, if we went back just a little bit in order to give the background, in order to understand what is the meaning of the recent change. It would be well to look at what happened originally. Now, can you tell us some of the details of the setting up of the rating of analysts and schedulers and the new program, about when was it, and how did it come about?

THE WITNESS: Well, no doubt we could speak quite lengthily on it, but back in 1949 the Bureau of Ships saw the need of a new modern method in production planning and control and engaged a firm known as Kresap, McCormick, and Paggett. This firm at that time came up with the idea that a production planning control program could be set up which would be suitable for use of the Navy. The reports submitted by this firm concluded that the performance, analysis, and production shops were feasible and valid standards of measurement could be established by taking total jobs as issued by the Planning Department and breaking
52 them down at the shop level into basic operations or work elements. This was to be done by what was later known as the analysts and scheduler.

EXAMINER ELLIOTT: I don't want to interrupt your continuity, but I just want to interject this thought. The Civil Service Commission will not try the issue of whether this is a good reorganization or a bad one.

THE WITNESS: That is agreed.

So, therefore, in the neighborhood of 1952, as Mr. Spooner mentioned, the initial setting up of this type of work began and I believe the Charleston Naval Shipyard was to be the pilot yard in setting this type of production planned control up. Well through the early stages in these years it was decided on who was to be selected for this job. A very

extensive program was set up by the Bureau of Ships in which they made many manuals on the type of work, training needed to do these jobs and, of course, various testing programs were set up prior to the rating of analysts and schedulers in which to select the most qualified people to do this job.

The analysts and schedulers on a majority were selected from competitive examinations, obtaining the top of their register in the local trade or activity. From this, as I said prior, they selected the best people available to do this job. Then they were trained and a series of training programs were set up by the Bureau of Ships in which various time elements were involved. I am not too familiar with the exact times

53 at this particular point, but we can look in the record if it is necessary, but various hours were set up for different phases of the work to be accomplished by this man. In other words, he was trained to do this job. This was done in all shipyards.

MR. MURTHA: How long did the training program last, do you recall?

THE WITNESS: Offhand, I don't know the exact time. I believe it was hours and possibly Mr. Spooner may know or have the record of the Bureau on the hours of the courses.

MR. SPOONER: If I may hazard a very close guess, the training originating in the Charleston Naval Shipyard in 1952, at which time all shipyards were invited to send representatives from the Planning and Production Department and one other selected member from the shipyard to participate in this training. It lasted through the very early part of 1953. Training was conducted in both Norfolk and Charleston Naval Shipyards, personnel from Shop 51's were sent to Charleston, personnel from Shop 38's, the outside machine shops were sent to Norfolk. These people were then sent back to their own yards to install on a pilot basis within their yards the modified -- that is what we called it then -- shop planning procedures in those particular shops, Shop 51's and 38's, whatever the case might be.

54 MR. MURTHA: And each shipyard undertook its own training program for analysts and schedulers?

MR. SPOONER: Yes, sir.

MR. MURTHA: I just had the impression it ran three or four weeks. Is that about right, the training program?

MR. SPOONER: It varied between yards. There was no consistency for the amount of training provided.

MR. MURTHA: Let us agree it was a substantial training period?

MR. ELLIS: Different people might have different ideas.

MR. MURTHA: Let me ask Mr. Robertson, what is your recollection about the time spent in training?

THE WITNESS: Well, I believe in Philadelphia, the analysts in taking sections of groups, every analyst in every shop spent in the neighborhood of four to six weeks in a training session. Now it would vary in length and I would say between four and six weeks in Philadelphia was set up.

So with this, the selection of the people, then the work of the shop analysts begun. From there we come to the point of saying that we feel, as shop analysts and schedulers, with the abolishment of the rate that the major part of the analyst and scheduler work has been taken out of the shop and placed into the Planning and Estimating Division. It could be agreed that there is a certain percentage, as pointed out here, remaining in the shop that was done by an analyst and scheduler, and it

55 can be, as stated, work was done by the planning and estimator at that time is still being done by the planner and estimator, but what we would like to point out is that the work now being done in the Planning and Estimating Department has been the work that was performed by the analyst and scheduler.

MR. MURTHA: Now getting into the field of more general figures and with regard to the past, before the reorganization, and looking at the Agency's Exhibit No. 1, enclosure one, it gives the number of employees in the various divisions that were employed in spending the shipyard

planning dollar. Now, could you give us then, from that, an idea of the number of analysts and schedulers compared to the number of people in P&E? This is prior to reorganization.

THE WITNESS: Well, prior to reorganization, and only going by the figures on the chart, showing that the job analyst in Philadelphia presented a figure of 181, and the job planning functions of the Planning and Estimating Department registered 67.

MR. MURTHA: Looking at the totals in the shops, how many were engaged in the work of analysts and schedulers?

THE WITNESS: The totals for Philadelphia read 326 --

MR. MURTHA: Let's take totals, national totals.

THE WITNESS: National totals show 3,519 in the shops.

MR. MURTHA: You would call these people analysts and schedulers?

56

THE WITNESS: With the exception of clerical support. Now what is meant by clerical support in many of these instances, I am sorry, I wouldn't be in a position to state.

MR. SPOONER: I would like to clarify that, if I may, since I had a hand in the preparation of that chart. The source of these data was the personnel listings as provided to the Bureau of Ships by the shipyards for January 1959. In this personnel listing breakdown, each shipyard listed the group 4B clerks who worked in the shop planning section of the shops. We added numerical totals of these people from those personnel listings. When we talk about clerical support, we are talking about group 4B people and primarily would mean those who do typing, clerical, and stenographic work in a shop planning section as reported by the yards.

MR. MURTHA: As I understand it, the analysts and schedulers have about 2,200 members, which you would get if you take the first three groups under shops?

THE WITNESS: Right.

MR. MURTHA: On Exhibit No. 1, enclosure one, now how about planning and estimating?

THE WITNESS: You eliminate their clerical support --

EXAMINER ELLIOTT: Is this something he knows of his own knowledge or just reading from the chart?

57 MR. MURTHA: I suppose -- we are not going to take up any time with this at all, but I just wanted to get the background, just that much.

EXAMINER ELLIOTT: Let's try to work with questions. You say you have about 2,200 shop analysts and schedulers now?

THE WITNESS: Yes, sir.

EXAMINER ELLIOTT: How many P&E people before that, to your knowledge?

THE WITNESS: To my knowledge, I would have to again refer to this chart which looks in the neighborhood of 1,200.

EXAMINER ELLIOTT: How many were there in your shop? How many shop analysts and schedulers in the yard you worked in? How many?

THE WITNESS: In the shipyard?

EXAMINER ELLIOTT: Yes.

THE WITNESS: Some two hundred.

EXAMINER ELLIOTT: Now how many P&E people were there at the time before the change?

THE WITNESS: Well, I would say around one hundred, approximately.

EXAMINER ELLIOTT: In other words, two to one.

THE WITNESS: Right.

EXAMINER ELLIOTT: Now how many shop planners are there in your yard?

THE WITNESS: Shop planners?

EXAMINER ELLIOTT: Yes.

58 THE WITNESS: Eighty.

EXAMINER ELLIOTT: And how many P&E people now?

THE WITNESS: That I don't know. The force was bolstered by some fifty, so I would say it would be 150.

EXAMINER ELLIOTT: In other words, in your own yard, to your own knowledge, there were formerly about two hundred shop analysts and schedulers and about one hundred P&E people. Now all the shop analysts and schedulers are gone, there are about eighty planners left and about 150 P&E people. Is that about right?

THE WITNESS: Approximately right, yes.

What I would like to do, if I may, at this time is to point out for an example, which can be substantiated by a witness later, is that, for example, in the amount of job analyst work being performed by the analyst and scheduler for a job order breakdown in the shop, Shop 11. The Philadelphia Naval Shipyard had 27 analysts and schedulers, three of which were doing primarily scheduling work, one of which was working directly on standards development, leaving some 23 analysts doing analyzing JOPC work. So in this reorganization we have now in Planning and Estimating rated eight additional planners and estimators from Shop 11, we have detailed eleven to planner and estimator from Shop 11, and we have remaining in the shop as shop planners seven, and four have been rated in the Standards Department. So actually more people have been brought into the picture rather than less, and in the

59 Planning and Estimating Department are working on a six-day a week basis and many times a twelve-hour day basis because of the need of the new write-up in P&E, but that is done by the former analyst and scheduler now rated as planner and estimator or detailed there as planner and estimator. One point of clarification. I am not too certain of, but I heard the statement made earlier that the work in planning and estimating is less definitive than what was done in the shop.

I take exception with the Exhibits because in my way of quickly looking at the two Exhibits, they look identical.

MR. ELLIS: This is -- this I don't think is testimony. This is something for counsel to point out.

MR. MURTHA: To clarify what you have just said, Mr. Robertson, the chart we were looking at, in Exhibit No. 3, indicates the job analysis naturally adds up to 1,925 and shop scheduling is 229. Standard

development is 170. So, the great bulk of the work being done by analysts and schedulers was --

THE WITNESS: Writing of the detail in this job order process.

MR. MURTHA: -- analyzing and routing and determining the work to be done?

THE WITNESS: Yes.

MR. MURTHA: How it was to be done?

60 THE WITNESS: Yes.

EXAMINER ELLIOTT: I don't think there is any dispute in what has transpired. I think Mr. Spooner said that.

MR. MURTHA: After the reorganization some of the analysts who were doing standards work became standards men?

THE WITNESS: By competitive examination.

MR. MURTHA: As GS --

THE WITNESS: Ten in Philadelphia.

MR. MURTHA: And some of them went to scheduling?

THE WITNESS: Yes, I presume by the same method of competitive examination.

MR. MURTHA: Just one other thing for background purposes. On Exhibit No. 2 to enclosure one, it shows the division of the shipyard planning dollar and you will note there that the shop and lists had 15.7 percent of the planning, whereas P&E had 22.2 percent. So that that gives, I think, some idea of the situation as it existed prior to the reorganization.

Now, what happened to you in connection with this reorganization?

THE WITNESS: In the earlier stages of the reorganization I was detailed to the planning and estimating --

MR. ELLIS: Is he an appellant?

MR. MURTHA: No.

MR. ELLIS: What difference does it make?

MR. MURTHA: Upon the reorganization, what happened to you?

61 THE WITNESS: I was detailed to Planning and Estimating Department for a period of ninety days.

MR. MURTHA: So that for a period of ninety days you have actual personal experience with what went on in P&E under the reorganization program?

THE WITNESS: Yes, sir.

MR. MURTHA: Now, will you describe your duties while you were there?

THE WITNESS: Well, I think, if I may Mr. Murtha, it may be repetitious and the fact that the other appellants in the case would state exactly what is going on, and I think I would be repetitious at this time to state the duties that are performed in the P&E level.

EXAMINER ELLIOTT: I was just thinking by what he said about being repetitious. Is there any disagreement between the Navy and Mr. Murtha that some of the duties of the shop analyst and planner have actually been transferred to P&E?

MR. ELLIS: Not on that bare bones statement, no.

MR. MURTHA: That is my problem. I want to put some meat on the bare bones. Can I confer a moment?

EXAMINER ELLIOTT: Yes.

MR. MURTHA: Let me ask one final question here. From your experience as president of the association, and because of the many visits that you have made to different shipyards, are you in position to
62 state whether or not the conditions at Norfolk and Philadelphia, for the purpose of the test question that is at issue here, are similar enough so that one answer would apply to all?

THE WITNESS: Well, again to an order of directive to the basic concept of it, it would be similar. But, every shipyard has eleven different interpretations of their own. But basically to the order issued under 4850.14, they are the same.

MR. MURTHA: Does anyone have any questions?

EXAMINER ELLIOTT: There are a few I would like to explore. You are president of the association?

THE WITNESS: Yes.

EXAMINER ELLIOTT: Now you touched on the fact this morning, the Navy Department, much of the work done by the men in your association was transferred over to P&E. I think we have also heard some of the men were examined or given examinations and placed in those jobs. Leaving the technical point for the moment, as far as the transfer of functions is concerned, I would like to ask you just what it is that members of your association feel should have been done that was not done?

THE WITNESS: Well, to get away from the technical part of it, first of all --

MR. MURTHA: Don't get away from the merits.

63 THE WITNESS: We felt that if the functions of this job planning was moved into the P&E our people should have been moved in to do the work. Now, we were given the opportunity by the Bureau of Ships to qualify for this P&E vacancy by the virtue of taking a test for a job that we were already qualified for. The examination was given -- the examination given was that for position of analyst and scheduler, not that for a planner and estimator. So, therefore, we took an examination for a job we were already qualified for. Some of our people, and a great many of our people, through some type of pressures, feeling that they were going out of a job, flunked the examination. So consequently we have had over 50 percent of our people that flunked out and lost the opportunity of ever going possibly to P&E at this stage of the game by virtue of this examination. But nevertheless, we feel that if our work is being done over in this other agency there is where our people should have gone with the work to do it.

MR. ELLIS: I wonder if I might ask a question here?

EXAMINER ELLIOTT: Yes.

MR. ELLIS: Actually then, your complaint is that you had to take an examination for the P&E assignment?

THE WITNESS: No, sir. The complaint is not that we had to, we just mention the fact that we did. We were given the opportunity. He asked about the opportunity also.

MR. ELLIS: The P&E job does carry a different rate?

64 THE WITNESS: Yes.

MR. ELLIS: Would you agree P&E duties generally are somewhat different than those of scheduler and analyst?

THE WITNESS: Would you agree that they are somewhat different?

MR. ELLIS: Yes.

THE WITNESS: Somewhat, but I wouldn't agree to possibly a grade percentage difference.

MR. ELLIS: How long has there been in existence a rate of planner and estimator?

THE WITNESS: A good many years.

MR. ELLIS: Even prior to the time that Production, Planning and Control Board that has been testified to was inaugurated?

THE WITNESS: Yes, sir.

MR. ELLIS: Would you agree that the planner and estimator job is somewhat more comprehensive than the scheduler and analyst position?

THE WITNESS: I would say in the field of advanced planning aspect; in other words, in going out to meet the customer which the analyst and scheduler did not do on such a large scale, although we did do it in a smaller scale than P&E. But the analyst, I feel, can perform and is performing very similar duties as a P&E man which has been brought out at various conferences by the Bureau of Ships in which there was an overlapping of duties between P&E and the analyst and scheduler.

65 MR. ELLIS: You would then agree that the planner and estimator, however, has been doing planning and estimating duties for many years?

THE WITNESS: As such, yes, sir.

MR. ELLIS: Which encompassed the duties that the scheduler and analyst also has been doing?

THE WITNESS: No, sir, because the scheduler and analyst have been doing the detail planning on a line by line, item by item level.

MR. ELLIS: Would you say the planner and estimator is not qualified to do that?

THE WITNESS: Well, let me put it this way. We were told by the Chief of the Bureau of Ships that the analyst and scheduler would be assigned to the P&E section to train the planner and estimator in how to prepare this document.

MR. ELLIS: And you in turn have likewise received training, I believe you testified.

THE WITNESS: Yes, sir.

MR. ELLIS: Not to exceed six weeks?

THE WITNESS: Yes, sir.

MR. MURTHA: With regard to P&E, they didn't take this training program with regard to this new function that the Bureau of Ships was inaugurating back in '52, '54, in there, did they?

66 THE WITNESS: No, sir.

MR. SPOONER: Actually they received training prior to then, but in limited number.

MR. MURTHA: Just their top men?

MR. SPOONER: Not necessarily.

MR. MURTHA: Professionals.

MR. SPOONER: Back in 1948 and '49, Admiral Klein arranged with Mr. Levy, of the Newport News Shipbuilding Corporation, for a training session for planners and estimators from each naval shipyard to spend two weeks, possibly longer, I can't be exactly sure of the two weeks, in receiving training of this type and representatives from all naval shipyards were sent at that time.

MR. MURTHA: Now, let me ask you, Mr. Robertson, when did you go to work for the shipyards originally?

THE WITNESS: Back in 1942.

MR. MURTHA: And you have worked for them continuously up until now?

THE WITNESS: Yes, sir.

MR. MURTHA: What is your rating?

THE WITNESS: Leading man welder, presently.

MR. MURTHA: And you are craft-trained?

THE WITNESS: Welder.

MR. MURTHA: You became an analyst and scheduler, when?

67

THE WITNESS: 1954. Prior to that I had been a shop planner welder, prior to the rating of analyst and scheduler.

MR. MURTHA: Now, in view of the questions that Mr. Ellis asked you, let's clarify this as much as we can. Did they have a production planning and control system operating in the Bureau of Ships prior to this period of '52, '54, when this program was started?

THE WITNESS: Well, if there was a program in operation, no doubt there was a type of planning, but direct control procedures, to my knowledge, and reading the various documents that have been put out by the Bureau of Ships was very limited in its way. It was not too great detail planning. In other words, the only piece of paper that came out of P&E was as simple as this (indicating) passed to a supervisor who in turn had to do his own job planning out of his back pocket to get the job done.

MR. MURTHA: In other words, there was a new program inaugurated after Kresap, McCormick and Paggett report, which was about 1950. After that period, there was a new program?

THE WITNESS: Yes.

MR. MURTHA: The essence of the program is the job analyst sheet?

THE WITNESS: Yes, sir.

MR. MURTHA: That did not exist before?

THE WITNESS: No.

68

MR. MURTHA: So that the people in P&E could not be and were not experienced in this phase of the program?

THE WITNESS: That is right.

MR. MURTHA: And as you pointed out a moment ago, in the Agency's Exhibit No. 1, which is BuShips Instruction, there are repeated references in there -- I made reference to them in my memorandum so you can find them -- indicating the degree of retraining that was necessary in P&E before they could perform this work.

MR. ELLIS: If Mr. Murtha wants to testify, let him do so in argument.

MR. MURTHA: I am saving time.

EXAMINER ELLIOTT: I think we all understand that there was a short training program for analysts and schedulers. Is that right?

MR. MURTHA: It wasn't short. It was rather an elaborate program.

EXAMINER ELLIOTT: Six weeks.

MR. SPOONER: May I interject a point for clarification purposes?

EXAMINER ELLIOTT: Yes.

MR. SPOONER: Prior to 1954, the planners and estimators were required to make quite detailed job order write-ups and did so. We can furnish copies of this, if necessary, as exhibits to show the large amount of detail that these people did write into the job orders that were issued prior to the 1954 period. So they were not totally unqualified. This is
69 not something new to them what we are asking today.

EXAMINER ELLIOTT: I think we are belaboring the point pretty much agreed to by everyone. That is, something was transferred to shop analysts and planners position to P&E. I think you said so yourself, so I think we are belaboring the point pretty much.

MR. ELLIS: We want to make an explanation that something had been done there previously.

MR. MURTHA: Mr. Examiner, from time to time some of the people in BuShips have attempted to say, "Oh, this is nothing new for P&E. They have been doing that even before this program." Now if this is to be an issue, I think we can prove that it isn't. Now I think obviously they came up with a new production planning control program which required certain things to be done. They set up a new rating of A&S. I would like to know if this is to be an issue. I think the P&E did not perform the detailed, comprehensive planning control job, routing, estimating, scheduling, controls, follow-ups, and so forth, program before this new program was inaugurated about 19 -- following 1950.

MR. ELLIS: I think we can all agree though, however, there has always been a planning. You have to plan to do any work. I think it is a question of degree and detail. I think probably we are quibbling over nothing.

70 EXAMINER ELLIOTT: I think so too.

MR. ELLIS: Just as his own witness said, they did it out of their back pocket.

EXAMINER ELLIOTT: I think the chart that Mr. Spooner explained to us fully illustrates that the shop and his planner did a lot of this job sheet that is now being done by P&E. I don't think there is any dispute on that point. So let's leave that.

MR. MURTHA: I would like to introduce then, right along with this point, our exhibit, which will be Exhibit No. 2, which is --

EXAMINER ELLIOTT: Do you have a copy for Mr. Ellis?

MR. MURTHA: -- which is a copy of an order sent out in Philadelphia, but which I think quite accurately reflects the transfer of functions.

I want to offer Exhibit No. 2, that is Appellants' Exhibit No. 2, memorandum from Commander of Philadelphia Shipyard dated May 16, 1960, "To All Analysts and Schedulers" and I want to call attention to the second sentence of the first paragraph which reads:

"Perhaps one of the most important aspects of the revised production planning and control program is the transfer of detailed job planning processes from Production Department shops to Planning and Estimating Division's plan department."

71 MR. ELLIS: Reference is made solely to those portions we have just listened to. I haven't examined the document. I have no objection.

EXAMINER ELLIOTT: Of course, we will put in the whole document.

(Appellants' Exhibit No. 2 was marked for identification and received in evidence.)

MR. MURTHA: I think it has been established, let's just verify this, upon the reorganization following last November, 1949; shop¹⁹⁵⁹ analysts and schedulers, in addition to those assigned up there permanently, analysts and schedulers were loaned to P&E for the purpose of assisting them in developing the new planning procedure. Was that done internationally?

THE WITNESS: It was done nationally.

EXAMINER ELLIOTT: It was to be done nationally.

MR. MURTHA: It was done in Philadelphia?

THE WITNESS: It was done in Philadelphia.

EXAMINER ELLIOTT: Do you know as a fact it was done nationally?

THE WITNESS: No, sir, as a fact.

MR. SPOONER: Again, it was not done nationally. Several yards made no transitions in terms of putting people from the shop into P&E until such time as the examinations had been held and selections were made at which time the people were put in the P&E and rated and paid
72 for the work for which they were doing.

EXAMINER ELLIOTT: And some of them were detailed?

MR. SPOONER: Some were detailed. Eleven yards, eleven different interpretations.

MR. MURTHA: What you are saying is that in some shipyards they didn't make any changes at all until these examinations, is that right?

MR. SPOONER: They didn't transfer any people or detail any people until such time as the examinations were held and selections were made.

MR. MURTHA: Related testimony in Philadelphia. How many analysts all told in the beginning went up to P&E?

THE WITNESS: Sixty-four analysts and four senior analysts, four supervisors.

MR. MURTHA: Sixty-nine.

EXAMINER ELLIOTT: Were these detailed or promoted?

THE WITNESS: Detailed.

MR. MURTHA: And then eventually how many of them were permanently?

THE WITNESS: I believe twenty-six have been rated permanently and there still are some twenty-four, I believe, on detail.

MR. RATERMAN: Mr. Examiner, I think I can clarify this point. The Philadelphia Naval Shipyard was one of the few yards that made this transition by ship. Most of the shipyards made them by shop.

73 Philadelphia, as I recall, was one of the first yards to move. So, in order to do this, they detailed these people up to assist with the additional work in Central Planning.

MR. ELLIS: Let me ask one question and clarify both your statements. Were all these people sent up there to work or were some of them sent up there for training?

THE WITNESS: Sent up in a body to do the actual detail writing of the JOPC.

MR. ELLIS: None sent up for training?

THE WITNESS: No, in fact they were sent up to train the JOPC people.

MR. MURTHA: That was merely following out BuShips' Instruction 4850.14 which states that the analysts and schedulers are to go up to P&E and assist them in working out the program.

Referring to that same exhibit, which is Appellants' Exhibit No. 1, BuShips' original order, isn't it true that the planner and estimators were also to receive training in the use and development of standards?

MR. ELLIS: The exhibit speaks for itself.

EXAMINER ELLIOTT: I think so too.

MR. MURTHA: Then I would like to call your attention particularly, Mr. Examiner, to --

74 EXAMINER ELLIOTT: Let me save you the time of reading it and I assure you I will give it very close scrutiny.

 MR. MURTHA: Not only were they to be trained in the work analysts and schedulers were doing, but also to be trained in standards work. Because as they pointed out, many of them weren't familiar with standards and thus would not be able to perform their new functions.

 (Witness excused.)

 MR. MURTHA: I would like to call Mr. Gayton.

Thereupon,

EDWARD GAYTON

was called as a witness for the Appellants and was examined and testified as follows :

MR. MURTHA: What is your name?

THE WITNESS: Edward Gayton.

MR. MURTHA: Where are you from?

THE WITNESS: Philadelphia Naval Shipyard.

MR. MURTHA: How long have you been there?

THE WITNESS: Twelve years.

MR. MURTHA: What is your rating?

THE WITNESS: Presently I am Loftsmen.

MR. MURTHA: What is a Loftsmen?

THE WITNESS: A Loftsmen is part of the shipfitting shop, a higher paid trade than a shipfitter, about 33 cents right now, but we make the templates and patterns for fabrication of the material.

MR. MURTHA: You are in Shop 11, which is shipfitting?

THE WITNESS: Yes, sir.

MR. MURTHA: Now, what year did you start to work; or do you remember?

THE WITNESS: 1948.

MR. MURTHA: Have you always stayed as a loftsmen?

THE WITNESS: I began my apprenticeship in 1948 as a shipfitter and midway through that apprenticeship we had a competitive examination of all the apprenticeship fitters at that time and there were two switched to loftsmen apprentices. I finished my apprenticeship as a loftsmen and since then I was a loftsmen until I acquired the rating of shop analyst, which was a permanent promotion in October of 1959 -- No, that would be October of 1958.

MR. MURTHA: From October 1958 on were you an analyst and scheduler?

THE WITNESS: Yes, sir.

MR. MURTHA: Subsequently, did you take an examination for

planning and estimating?

THE WITNESS: Yes, sir.

MR. MURTHA: You passed it?

THE WITNESS: Right.

MR. MURTHA: Where are you now?

THE WITNESS: I am detailed and have been detailed to planning and estimating since February 8th, close to six months now.

MR. MURTHA: In Philadelphia Shipyard?

THE WITNESS: Yes, sir.

MR. MURTHA: Will you describe for us your present job?

THE WITNESS: We receive the work from a project planner. I am in the instructional structural section of P & E, and the original P & E men are what we would say are project planners. They hand out the work--

77 MR. MURTHA: They what?

THE WITNESS: They hand out the work to the men who are detailed there now. In our section we have eleven men on detail. That is just on this here one section in P & E which is the repair section of surface craft. Aside from that they have the submarine section, and the new construction section. Now I am not acquainted with their docks.

MR. MURTHA: But your section is what?

THE WITNESS: This repair section.

MR. MURTHA: Repair section?

THE WITNESS: Repair section.

MR. MURTHA: What does that mean?

THE WITNESS: Well, it is different from the other two sections. We don't handle submarine work nor new construction; we handle the repairs and overhaul and miscellaneous jobs.

MR. MURTHA: For example, name several repair jobs.

THE WITNESS: Current jobs now are the Orion, which is a big overhaul job, and the FRAM job.

MR. MURTHA: That is the name of the ship?

THE WITNESS: No, that is the designation of this program in the Navy Department.

MR. MURTHA: Fleet rehabilitation, modernization, that is the

two big projects going on now --

78 EXAMINER ELLIOTT: We are not making any security breaches in this, are we?

THE WITNESS: No.

MR. MURTHA: You took an examination to get to be an analyst and scheduler?

THE WITNESS: Yes, sir.

MR. MURTHA: A word or two about this. Before work gets to somebody in P&E, where has it been beforehand; what has happened? I think you have seen the charts here, but isn't it true that the ship captain would indicate several months in advance what his problems were and what needed to be done?

THE WITNESS: It is my understanding that the ship captain requests the work, which goes to the Bureau's yard for approval, and upon approval relayed to its own yards. That is the start of these letters. In most cases, if it is approved by the type commander, then your advance planning takes over and --

MR. MURTHA: Advance planning; where is that.

THE WITNESS: That is in the P&E section.

MR. MURTHA: Where is the design section?

THE WITNESS: That is a separate department from the planning division. It is adjacent --

MR. MURTHA: It is in the planning department, though?

THE WITNESS: No, it isn't in the planning department.

MR. SPOONER: As a point of clarification, the design division and the P&E division are on similar levels within the planning department, headed up by a planning officer.

79

THE WITNESS: Right.

MR. MURTHA: How about engineering?

THE WITNESS: That is designing.

MR. SPOONER: The production engineering division is in the production department, supervised by a Captain, production department, production officer.

MR. MURTHA: Well, what I am trying to show here is that -- I will ask it.

Is it true that the first thing that comes to you is something that has already been approved, designed, engineered?

THE WITNESS: Right. When you mentioned engineering department, you were speaking about not the production engineering, he was talking about design. That is the same as design, engineering department you are speaking of is the same as design.

MR. MURTHA: What you have before you is plans, specifications?

THE WITNESS: Right.

MR. MURTHA: This has been prepared by somebody else?

THE WITNESS: Right.

MR. MURTHA: Not by P&E?

THE WITNESS: Right.

80 MR. MURTHA: Back in the shops, before you were moved up to P&E, what did you do?

THE WITNESS: My main job was analyzing the job, breaking it down in our shop, for our shop, and step by step for each section of the shop.

MR. MURTHA: Suppose that some other shop were required to do some of the work?

THE WITNESS: Some of the work on that, we would have to write an assist work ticket to them on our process card.

MR. MURTHA: Which shop is responsible for the job?

THE WITNESS: It depends on what the plan is. If the major part of the job is a shipfitting job, then Shop 11 would be responsible; the same way with sheet metal. If it was a sheet metal job, they would be the lead shop; they would be responsible.

MR. MURTHA: The shop that has the most to do with the job is called the lead shop?

THE WITNESS: Right.

MR. MURTHA: And what would come to you from P&E before the reorganization?

THE WITNESS: Central routing and material and progress list, M&P we call it, which is similar to this (indicating).

MR. MURTHA: What did you call the thing you got from P&E?

THE WITNESS: That was a routing. It is a job order.

MR. MURTHA: Job order?

81 THE WITNESS: A job order. That is what was in evidence here before from Mr. Spooner.

MR. MURTHA: Would that be correctly described as a simple general instruction of the entire job?

THE WITNESS: Yes, that was an instruction to us.

MR. MURTHA: What would the analyst and scheduler and lead shop do when he got the job order?

THE WITNESS: Why, that work for that particular job would be assigned to us by a scheduler that was scheduling for that particular ship, that particular type of work, give us that routing and plans and all the necessary papers which he had received and collected, and we would go ahead and break that print down to flow through the shop and ship installations, if it was that type of job.

MR. MURTHA: What would you do then with regard to other shops? I asked you that before, but I don't have the answer clearly.

THE WITNESS: We would have an idea of what shops were involved from this routing, because they had estimated time for that assist work. We would investigate the job to see if everything had been foreseen by the P&E man; if not, we would note that as a non-routed assist. In other words, it was something he hadn't seen for various reasons; probably the ship wasn't in at the time, which is the case in most of these routings, the ships are not in.

82 The way that they arrive at these figures is by taking these trips to meet the ship, where it is, if possible, to get an idea of what the work is and their time there is limited, so that they come back with the notes and they work from them. When we investigate the job and we see there is work there he hasn't covered, it is our job to notify that shop that we want that type of work done to accomplish the main job.

Then, in cases where the assist work had been taken care of on the routing, we will expand a little bit on what he has here. In other words, he has a line there, "Assist with above work." We will spell out exactly what we want, what type of staging, if any, what type of rigging is involved in this or removal of any obstacles, wiring, vent work. That is the extent of that job for the job analyst.

MR. MURTHA: Now will you explain the difference between what you do now in P&E in the structural repair section and what you did when you were in Shop 11?

THE WITNESS: Well, I was in the second group to be detailed to planning and estimating; that was February 8th. Since that time I have spent, on the average I would say, about 85 percent of my time doing exactly the same thing that I did in the shop. The only major addition to what I had done in the shop was a detailed research of material. We had a certain extent of that as the shop analyst, but now we are responsible
83 for the M&P. That is initiated in P&E like it had been and that is in addition to the duties I did have in shop analyst.

MR. MURTHA: What do you do with respect to material?

THE WITNESS: We break that job down. Now, in a lot of cases the design section, which drew up the plans, has provided for that material on their bill of material, maybe even stubbed it in advance of the job, in advance of my getting it. In a large job they take care of that.

MR. MURTHA: In a good many cases that happens, so you are not required to do anything with respect to --

THE WITNESS: I check what they have ordered. I break down that job and make sure they have ordered enough and that their stock numbers are correct, because I have to list that on my M&P and start out with exactly what they did, the exact specifications that they want. But if there is other material they haven't ordered, that is where new work for me is involved.

MR. MURTHA: If you were required to put down on a percentage basis, what percentage of your time now is doing substantially the same thing as you were doing before?

THE WITNESS: As I said, since I have been over there, I would say 85 percent of my time has been spent on the same job I was doing.

MR. MURTHA: You are up there on a temporary basis?

84 THE WITNESS: Detailed. No additional money.

MR. MURTHA: Are you up there to work or to train somebody?

THE WITNESS: I am working now.

MR. MURTHA: How many other A&S, former A&S people are up there in the repair section?

THE WITNESS: In my section alone, at last count, there were eleven of us.

EXAMINER ELLIOTT: How many in the whole section?

THE WITNESS: I couldn't tell you that, in the whole eleven shop sections.

EXAMINER ELLIOTT: Repair section?

THE WITNESS: My section alone, there is fifteen.

EXAMINER ELLIOTT: Fifteen?

THE WITNESS: Yes, sir. Three of the fifteen are the former P&E men, old type P&E men, and one is a recently rated shop analyst. There are four rated P&E men and eleven of us are detailed, eleven additional men.

MR. MURTHA: Then would you describe the work done by the eleven former analyst schedulers that are either up there permanently or temporarily as compared to what is being done by the four old P&E men?

THE WITNESS: Well, those four men are project planners.

MR. MURTHA: Who are they; who are the four members?

85 THE WITNESS: Four P&E men are project planners; they get word from advance planner, they are each assigned a ship, ships, or some projects, and everything pertaining to that comes to them from the advance planner. And they are the ones who hand the work out to us, and they don't do much of this (indicating).

MR. MURTHA: What do you mean by "this"?

THE WITNESS: Much of the breakdown of the particular job. They are so involved with keeping the records, distributing the work, and

answering questions between the type desks, that I would say probably ten percent of their time is actually put on breaking down the job.

MR. ELLIS: I don't see the relevancy.

MR. MURTHA: What is the percentage of time the eleven people in the same position put in on breaking down jobs?

THE WITNESS: They are about the same as I am, about 85 percent. Eighty-five percent of their time is breaking down jobs.

MR. MURTHA: Do you have any examples to show us so we can see what it is? What you used to do and what you do now.

THE WITNESS: Yes. This particular job I have had been done before on the Fulton.

MR. MURTHA: The Fulton is the name of the ship; is that right?

THE WITNESS: USS Fulton.

MR. MURTHA: Do you have some papers there that show this?

86

THE WITNESS: Yes.

MR. MURTHA: I wonder if we can identify this.

EXAMINER ELLIOTT: I will tell you what, this is a good point to recess for lunch, I think.

MR. MURTHA: Okay.

EXAMINER ELLIOTT: Just before we recess, I would like to spend five minutes with counsel.

MR. MURTHA: All right.

EXAMINER ELLIOTT: I think I have a fairly clear picture of the facts. I address myself first to you, Mr. Murtha, because you brought all these people in from out of town and I suppose most of them have some sort of a story they want to tell and you said you want to put some bones to this thing --

MR. MURTHA: Meat.

EXAMINER ELLIOTT: I am interested in saving your time and theirs. The Navy has given a pretty clear presentation. I think the facts of the matter stand out pretty clearly. Have you got any ideas how we can perhaps shorten this thing up and avoid repetition?

MR. MURTHA: I think the bare outline doesn't indicate the

percentage of the work --

MR. ELLIS: Actually, I think we could concede what your people are saying, frankly.

EXAMINER ELLIOTT: That is the impression I had, that what most of Mr. Murtha's --

87 MR. ELLIS: We can concede all of these sort of things. Maybe we can get together on a stipulation, if that is what you are working towards.

EXAMINER ELLIOTT: That is what I was thinking of. There are many things to be gained from that. A good clear record is a valuable thing from both your standpoints.

MR. MURTHA: For instance, this last little bit of evidence, that gives you an entirely different picture of the situation of P&E.

EXAMINER ELLIOTT: Well, it is possible you might think that --

MR. MURTHA: Four guys, eleven, you see, something that they have never been doing before.

MR. ELLIS: Actually, you are getting around, frankly, to the possible wisdom of detailing people up there and not paying additional money; he keeps bringing that up. We can explain all of that, those kind of things, but we will get into an endless hassel.

EXAMINER ELLIOTT: I tell you there is an opportunity for stipulation here that I think would save us a very burdensome record, because I think the Navy pretty much shows evidence to stipulate and avoid the detail.

MR. MURTHA: The detail is not the important point. This was a function, know how, which was within A&S before, and something new, and something they want to continue, and something they moved right up into

88 P&E, and this isn't something tacked onto what P&E used to do, it isn't any minor little adjustment, it is a great big substantial new thing.

MR. ELLIS: Our exhibits show, Don, that these things are no longer done down in the shop by your clients; they are now over across in the planning.

EXAMINER ELLIOTT: Using your adjectives, I think the Navy is willing to accept that this is a great big new thing.

MR. ELLIS: We will show you the number of people involved; we have exhibits, up in the hundreds. We will show you money; we have charts on that. It isn't a small thing; we are not trying to minimize it.

EXAMINER ELLIOTT: I think Mr. Ellis is willing to give you the facts. I think Mr. Ellis is willing to give you the facts and if he is willing to give you the facts, why, the law should not be hard to find. Why don't you have your lunch and then sit down and spend a good tight half hour with each other?

MR. MURTHA: I want to think over carefully your suggestion and be sure -- you are the boss. I do have some ideas as to what makes a good record and what doesn't, and sometimes stipulations are suicide and sometimes they are to your advantage. I have a lot of people that I am representing and to them this is extremely important.

EXAMINER ELLIOTT: Off the record.

89 (Discussion off the record.)

EXAMINER ELLIOTT: We will recess for lunch and return at 1:45.

(Whereupon, at 12:30 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 1:45 p.m., this same day.)

90 **AFTERNOON SESSION**

(2:00 o'clock p.m.)

Thereupon,

EDWARD GAYTON

was recalled as a witness for the Appellants and was examined and testified further as follows:

MR. MURTHA: Mr. Gayton, you said you had an example which showed the old system and the new?

THE WITNESS: Yes, sir.

MR. MURTHA: Let's get this marked.

MR. ELLIS: You had better refine that. What do you mean "old system" --

MR. MURTHA: We will do that.

EXAMINER ELLIOTT: That will be Appellants' Exhibit 3-A, 3-B, and 3-C.

(Appellants' Exhibit 3-A through C, was marked for identification.)

MR. MURTHA: I hand you Appellants' Exhibit 3-A, Mr. Gayton, consisting of three sheets marked Appellants' Exhibit 3-A, 3-B, and 3-C.

MR. ELLIS: Could we look at it just a second, so we can understand your testimony?

MR. MURTHA: I want to make this Appellants' Exhibit 4.

(Appellants' Exhibit 4 was marked for identification.)

91 MR. MURTHA: I show you Appellants' Exhibit 3-A, B, and C and ask you what it is?

THE WITNESS: This is the type of routing we received under the shop analyst and scheduling system that we had, and it is a routing from P&E to remove existing bulkheads, patch and modify structures shown in reference A, which is the plan, and install new bulkhead shown on reference A, which is the plan.

MR. MURTHA: Exhibit 3-A, is that piece of paper called a job order?

THE WITNESS: Job order, that is a job order.

MR. MURTHA: And you as a shop analyst and scheduler -- in what shop?

THE WITNESS: 11 Shop.

MR. MURTHA: 11 Shop received this piece of paper; it is a single sheet of paper from P&E?

THE WITNESS: Right.

MR. MURTHA: And this is the job order that you received before the reorganization?

THE WITNESS: Right.

MR. MURTHA: Is that right?

THE WITNESS: Right.

MR. MURTHA: What is 3-B?

THE WITNESS: 3-B is the planner's record of what he estimated on this job.

92 MR. MURTHA: 3-B was also received from P&E?

THE WITNESS: No, they keep that in their files; that is his worksheet, in other words. That is his worksheet, having worked this estimate up.

MR. MURTHA: So 3-B is not something that was received by the analyst and scheduler; is that right?

THE WITNESS: That is right.

MR. MURTHA: What is it again?

THE WITNESS: It is his own method of keeping a record of what he did on this job, on this routing.

MR. MURTHA: What is Appellants' 3-C?

THE WITNESS: That is the M&P list --

MR. MURTHA: What does that mean?

THE WITNESS: Material and progress list.

MR. MURTHA: What does that mean?

THE WITNESS: That means the planner and estimator has ordered this material but in this case here, eight items, seven of them had already been ordered in advance by the design section, so that he had to order one additional plate for that eighth item which hadn't been provided for by the design.

MR. MURTHA: Appellants' 3-C, then, is something that you received from the P&E section before the reorganization; this came along with the job order?

THE WITNESS: That is right.

93 MR. MURTHA: And that lists the materials?

THE WITNESS: Correct.

MR. MURTHA: Does that reflect that they have been ordered?

THE WITNESS: Yes, sir.

MR. MURTHA: And in the example that you are showing to us, which relates to the Fulton, which is the name of a ship?

THE WITNESS: Correct.

MR. MURTHA: On this bulkhead job, seven of the eight material items have already been ordered by design before it got to P&E?

THE WITNESS: Right.

MR. MURTHA: Now, having received the job order, which is 3-A, and the material and progress list, which is 3-C, before the reorganization, you as an analyst and scheduler, what did you do?

THE WITNESS: Upon receipt of the routing, the scheduler assigned this to a particular man --

MR. MURTHA: The scheduler, where is he?

THE WITNESS: He is in the shop.

MR. MURTHA: He is on the shop side?

THE WITNESS: Right. And he would have the plan, which they reference as A. He would have that with it and give it to a man to work and we would break that plan down piece by piece so that we would route it to the shops, to each section of the shops. In our shop alone it is possible we might run into nine different sections and they are coded and each different section would receive a separate ticket, instruction ticket, and a detailed accounting of what was expected of that section without them having to look at the plan.

MR. MURTHA: Now I show you Appellants' Exhibit 4 and ask you what that is?

THE WITNESS: That is our job order process card made up by the shop analyst.

MR. MURTHA: This consists of four sheets with entries made on both sides. This reflects the work done by the analyst and scheduler in connection with the job order which is Appellants' 3-A; is that right?

THE WITNESS: Right.

MR. MURTHA: What did the analyst and scheduler do specifically, looking at Exhibit 4; what was his function?

THE WITNESS: We as shop analysts could design how we wanted to put this job on the ship.

MR. MURTHA: What was this job again? Just in your own words tell us what had to be done.

THE WITNESS: Bulkheads, which are divisions in the ship between decks, steel bulkheads.

EXAMINER ELLIOTT: Just call them walls.

THE WITNESS: Partitions.

95 We could order this material out and let the ship handle it on the job or we could order it. It was determined which was the easiest way to do this job and the cheapest.

MR. MURTHA: Which way did you decide in this situation?

THE WITNESS: In this case -- it is not my job -- but they did decide to assemble, sub-assemble some bulkheads, which required stiffening members on the bulkhead and ship it out and let them do it on the ship.

MR. MURTHA: I see a lot of figures and notations. Tell us, starting with the first sheet, what they mean?

THE WITNESS: All these figures here, we assigned a JIC number for each section.

MR. MURTHA: What does JIC mean?

THE WITNESS: Job order and instruction card. That was the five-ticket system we had.

This next number indicates that they use a certain standard to determine this time which was allotted to each section.

MR. MURTHA: Time to perform the job?

THE WITNESS: Right. They arrived at time by referring to this standard in all these cases.

MR. MURTHA: The standard, is that a book or what?

THE WITNESS: That is a book we have, yes.

MR. MURTHA: And on jobs that were done over and over again there would be a set of standards?

96 THE WITNESS: Right. They arrive at the standard by a duplication of jobs and they can arrive at a close figure that way. However, where there is something like this, if it indicates it isn't a standard, they arrive at their own time without use of standards.

MR. MURTHA: There might be a variation from the standard, in which case you estimate the job?

THE WITNESS: Right.

MR. MURTHA: On your own, without looking at the standard?

THE WITNESS: After we --

MR. MURTHA: Would you determine first of all what materials were necessary in order to -- is this a repair of a bulkhead or the making of a new one?

THE WITNESS: Making of a new one.

MR. MURTHA: Then would you determine the materials that were needed to make the bulkhead?

THE WITNESS: No, sir. That was determined by design in advance. P&E no doubt checked that and we would check that same thing because there are items, mainly smaller items, which aren't provided for on the M&P and it is up to the job analyst to provide that.

MR. MURTHA: Is it necessary first of all to get the materials together?

THE WITNESS: Right.

MR. MURTHA: And is it a part of your job to indicate what materials are needed?

THE WITNESS: That is indicated on this.

97 MR. MURTHA: Now, on that first sheet?

THE WITNESS: That is your material and summary here. You list that material summary on our last sheet, and if it had already been provided, as it has in this case, we list that stuff. But there are other smaller items which they say "shop stewards", and we tell our material man in our office what sub stores we want and we list that. That is something that hasn't been indicated anywhere else.

MR. MURTHA: The first thing to do is to get the materials together?

THE WITNESS: That is the important thing because they don't dispatch this job --

MR. MURTHA: How did you go about getting these materials together?

THE WITNESS: We had a shop analyst, rated shop analyst, who took care of materials in our office. That was his sole job.

MR. MURTHA: These figures on the first page, what do they reflect?

THE WITNESS: This, after we break that plan down, we group the material by its weight, type of structural material, because there are two different sections in layout, three different sections and they have to be listed separately. You can't put all that material on one ticket, because that ticket would be in the hands of three different sections at one time.

98

MR. MURTHA: So after you list what material they will have to have in order to perform this job --

THE WITNESS: Right.

MR. MURTHA: -- then next what do you do? What is reflected on Exhibit 4?

THE WITNESS: After we complete this, we are finished with it as analysts and it goes to the scheduler.

MR. MURTHA: Looking at these pages before you, what do they reflect? What do they show, these line items?

THE WITNESS: They show that we have --

MR. MURTHA: Just in your own words, tell us what you outline there for this bulkhead.

THE WITNESS: We outline that the mold loft has to do work on this job. That is the development section of the shipfitting job, they have to do, or the next set of tickets, which is layout and fabrication of this material. There are five layout tickets involved there.

Next, it shows where this material is going, all to the assembly, in these three cases. In this case they are shipping that material out. So that we know we have three tickets here where material is going to assembly and we tell the assembly what to do with those pieces on this assembly ticket. That is a separate piece.

MR. MURTHA: What do you mean, you tell them what to do?

99

THE WITNESS: We tell them what pieces to put together to make a sub-assembly and where to deliver it, what to do with it. In some cases it might go to other shops or might go outside the yard to galvanize, and we instruct them exactly what to do with it. In this case there are three

assembly tickets. And there is an additional ticket to provide chipping service to these three assembly tickets.

MR. MURTHA: What is chipping service?

THE WITNESS: Chipping service is standard procedure, where the chipper in a job like this has to have -- where a fitter has to have a chipper to assist him in his work to do the chipping required on that.

MR. MURTHA: Will you tell us what chipping is?

THE WITNESS: Chipping is removing metal with the aid of an air hammer and chisel.

EXAMINER ELLIOTT: In other words, they have to make a bond so you can weld these plates on; is that the general idea?

THE WITNESS: They might have to bevel.

EXAMINER ELLIOTT: Shape it?

THE WITNESS: Right. Or after you have done it, you have all kinds of tack marks on your metal which you have to remove by chipping.

MR. MURTHA: Your job, as reflected by Exhibit 4, was to indicate what materials were necessary, where they were to go, who is to do the job, how it was to be put together, and also instructions about
100 installing it in the ship itself?

THE WITNESS: Right.

MR. MURTHA: And this would give instructions to everybody who played a part of any kind in performing that kind of job?

THE WITNESS: Right.

MR. MURTHA: Would you also estimate the number of hours it would take?

THE WITNESS: We estimate number of hours --

MR. ELLIS: I think we can concede everything Mr. Murtha has testified to.

MR. MURTHA: Thank you.

This, then, is the way the analyst and scheduler in P&E operated prior to the reorganization.

Now, do you have a bulkhead job that has been handled since?

THE WITNESS: I think I mentioned earlier that we have the exact same job.

MR. MURTHA: Wait. This is since the reorganization?

THE WITNESS: Right, since I have been on P&E, this exact job has been done on the Orion.

MR. MURTHA: Let's mark this Appellants' Exhibits 5 and 5-A.

EXAMINER ELLIOTT: These are blank forms?

MR. MURTHA: Yes, sir.

101 Also, please mark Appellants' Exhibits 6, 7, 8, and 9.

(Appellants' Exhibits 5, 5-A, 6, 7, 8, and 9 were marked for identification.)

MR. MURTHA: I hand you Appellants' Exhibit 5 and ask you what that is?

THE WITNESS: This is my routing, my job order process card for the same --

MR. MURTHA: When was it prepared?

THE WITNESS: This is dated 6-25.

MR. MURTHA: What year?

THE WITNESS: 1960 -- 6/25/60.

MR. MURTHA: This piece of paper, Appellants' Exhibit 5, is labeled what?

THE WITNESS: Job Order Process Card.

MR. MURTHA: Did you prepare it yourself?

THE WITNESS: I did.

MR. MURTHA: Is this under the new system?

THE WITNESS: Right.

MR. MURTHA: What is it?

THE WITNESS: It is the same job as we have shown in Exhibit 3-A, B, and C.

MR. MURTHA: Installation of a bulkhead?

THE WITNESS: Right. Tight.

102 MR. MURTHA: What did you do, compare that job order process card? How does it compare to the old one?

THE WITNESS: In comparison to the old one, we have the same M&P. There is no change in that.

MR. MURTHA: Which is the M&P sheet?

THE WITNESS: This one here. (Indicating)

MR. MURTHA: Appellants' Exhibit 9.

THE WITNESS: That is exactly the same --

MR. MURTHA: That is exactly the same as Appellants' Exhibit 3-C?

THE WITNESS: The form. I had to break this job down the same as I did in the shop, piece by piece, so that I could arrive at my estimates, same as we had formerly done. In addition to that, in the 11 Shop, we are responsible for estimating the welder's time also, because there is no planner and estimator welder here and we must stick to the standards they give us. That is the only way we can estimate the welding time, by figuring out the exact footage of weld and type of weld involved and applying the standards as they appear in the book. That is an additional job that we have over there which P&E didn't do before, but had been taken care of by the shop analyst in 26 Shop, the welding shop. So that is being done in most cases by the individual planner and estimator now. He must take care of his own welding.

MR. MURTHA: What is Appellants' Exhibit 5-A?

THE WITNESS: This is the final routing I put out.

103 MR. MURTHA: Exhibit 5 is the job order process card?

THE WITNESS: That is a carbon of that.

MR. MURTHA: 5-A is a carbon of 5?

THE WITNESS: Right.

MR. MURTHA: What is this, the second page anyway of 5-A; what is that?

THE WITNESS: That is what we call a shop work order instruction card, and that is the form used to my knowledge only by 11 Shop. It is possible some of the other shops use it. The structural section uses this form. This is a carbon of it.

MR. MURTHA: The form is Appellants' Exhibit 7 --

THE WITNESS: Oh, that. We list our material piece by piece and by types the same as we had previously done on the job order process card.

MR. MURTHA: Appellants' Exhibit 4?

THE WITNESS: We go through that same procedure and list it on here, type of material, and we also list it according to assembly, the assembly we want it in which we had shown in separate tickets here.

MR. MURTHA: As you did before?

THE WITNESS: But that process is also gone through on this here new form we have. In addition to that, after that became too involved,
104 in trying to line up our assembly work on this layout ticket, they instituted this assembly work order instruction card.

MR. MURTHA: That is Appellants' Exhibit 8?

THE WITNESS: That is for the assembly work, so that we can rearrange our grouping on this to raw material according to its class.

Then, finally, that is what that would look like, this would go in in this form. That is our assembly.

MR. MURTHA: Let's see here. Appellants' Exhibit 5-A, Page 4 is the same as Appellants' Exhibit 8; is that right?

THE WITNESS: This is Page 1 --

(Discussion off the record.)

MR. MURTHA: Just to keep from getting confused, let's call Appellants' Exhibit 5-A, take the first page as 1, and go ahead.

THE WITNESS: Page 1 is our routing. It lists all the shops involved on this job, the same as our original routing on P&E, Exhibit 3-A, in a little more detail. In fact, it is explicit enough to tell a quartermaster just exactly what he has to do so that he can accept this job or reject it and that is one of the new functions now where we have a quartermaster acceptance and we must be explicit enough on here for him to have a good idea of what that job is about so that he can make a decision as to whether the time we are allotting him on that is sufficient to do the job. Therefore,
105 that is why we outline here exactly what we want; whereas, here they just had "assist".

MR. MURTHA: What are Pages 2 and 3 of Exhibit 5-A?

THE WITNESS: Pages 2 and 3 are my breakdown of the job accord-

ing to type of material, according to the assemblies I want to make. And the destination is shown here, too.

MR. MURTHA: Where is that found in your exhibit, Appellants' Exhibit 4?

THE WITNESS: That is all shown right here (indicating).

MR. MURTHA: It is in there?

THE WITNESS: Right.

MR. MURTHA: And looking at the exhibit, Page 4 of Appellants' Exhibit 5-A, what is that?

THE WITNESS: That is the form we use for the assembly instructions. That goes to the assembly department and it lists exactly what pieces are put together and where to deliver them after assembly.

MR. MURTHA: Where are those found?

THE WITNESS: They are shown on these instructions.

MR. MURTHA: Exhibit 4?

THE WITNESS: To the assembly on these tickets here.

MR. MURTHA: Page 3?

THE WITNESS: We had four assembly tickets before, and that is what is involved here, just what they have on that card.

106 MR. MURTHA: The next sheet, Exhibit 5-A, what is that?

THE WITNESS: The next sheet is my own notes from my own record. I figured out the welding, footage of the weld, on this sheet and allotted the welder's time.

MR. MURTHA: That is 5-A, Page 6. And 5-A, Page 7, what is that?

THE WITNESS: That is material and progress list, which is the same as the original P&E form and same as on the original job; this material, most of it has been ordered in advance by design. There are three items on here which I provided that hadn't been ordered in advance. I totaled up my linear footage and felt that there was enough required to order a full length, or several lengths.

MR. MURTHA: Now, comparing 5-A with Appellants' Exhibit 4, what would you say as to the nature of the work relating to the job order

process cards now being done by P&E, as compared with what was being done by the analysts and schedulers prior to reorganization?

THE WITNESS: In this case, as in most cases, I have done everything on this job --

MR. MURTHA: What do you mean by "this job"?

THE WITNESS: Since I have been detailed to P&E, in everything on my assignment in P&E that I would have done and had previously done on this job as shop analyst.

107 MR. MURTHA: You are referring to this bulkhead job?

THE WITNESS: Right.

In addition to that, it was my responsibility to provide welders with information, with specific information, and estimate their time. We also provided for assists from other shops and gave them detailed information.

MR. MURTHA: We offer in evidence Appellants' Exhibits 3-A through C, 4, 5-A, 5, 6, 7, 8, and 9.

MR. ELLIS: May we see them?

EXAMINER ELLIOTT: I would like to ask you a few questions myself at this point.

In other words, your point is as a shop analyst you did about the same thing you are doing now in P&E. What also are you doing, what you didn't do in P&E?

THE WITNESS: We had more telephone calls. We were closer to the work.

MR. MURTHA: What do you mean by that?

THE WITNESS: We were constantly being called by leading men, quartermen, when there was some discrepancies in the job. Unforeseen obstacles arose --

EXAMINER ELLIOTT: How about shop planner, does he do everything --

THE WITNESS: I can't answer that. I haven't been in shop planning since the reorganization.

EXAMINER ELLIOTT: You were an analyst and a planner, weren't you?

108

THE WITNESS: I was a shop analyst and scheduler, yes, sir.

EXAMINER ELLIOTT: Scheduler, is that equated now to a planner?

THE WITNESS: The scheduler now?

EXAMINER ELLIOTT: Yes. In other words, is the scheduler now called a planner?

THE WITNESS: Right.

EXAMINER ELLIOTT: Then you were doing the planning as well as the analyzing?

THE WITNESS: I don't follow you closely enough there. Would you ask your question again?

EXAMINER ELLIOTT: Let's put it this way: Before you were doing what you call analyzing?

THE WITNESS: Right.

EXAMINER ELLIOTT: Planning and scheduling?

THE WITNESS: We didn't do the scheduling ourselves; we forwarded that to the schedulers. Do you follow me?

EXAMINER ELLIOTT: You were called an analyst and scheduler?

THE WITNESS: Right.

EXAMINER ELLIOTT: But you didn't do any scheduling?

THE WITNESS: On a small scale, because if we wrote assist work tickets we would have to schedule that assist work ticket for their information so they would know when we required that assistance. But the full time scheduler was the one who was in charge of handling all these jobs so that he could give them to the analyst in a proper sequence and, therefore, we would give them back to him so that he could date them according to his line schedule item.

109

EXAMINER ELLIOTT: Go ahead.

MR. MURTHA: With regard to this man you thought he was confused where the design was being done. Would you clarify that?

THE WITNESS: I think we got straightened out.

MR. MURTHA: Go ahead.

THE WITNESS: I was under the impression that the design was a separate branch.

MR. SPOONER: Separate division --

THE WITNESS: They are not directly connected in any way.

MR. SPOONER: Let's put it this way: We have a planning officer in the shipyard whose code number is 200. He is the boss of the planning department.

MR. MURTHA: When you talk about the P&E man, you are not talking about a design specialist; is that correct?

EXAMINER ELLIOTT: Are you finished with this man --

MR. SPOONER: You have two divisions under the planning officer, one is P&E division and the other design division.

EXAMINER ELLIOTT: I wasn't confused.

110 MR. SPOONER: These people prepare the plans and these people make the jobs.

EXAMINER ELLIOTT: Yes.

Do you have any further questions of Mr. Gayton?

MR. MURTHA: I would like to point out to the Examiner, although we did not attempt to take up time to go over these exhibits line by line, that it is visible to the naked eye that this man, in his old function of analyst and scheduler in regards to this bulkhead job, is doing exactly the same thing with the exceptions that he stated as he did before.

EXAMINER ELLIOTT: We will get them straightened out. Now, you don't have everything.

MR. SPOONER: Two points. One, it appears to me, having listened to the gentleman here, that he has done a pretty fair job of planning and understands his job. One, though, the estimating of welding requirements in terms of man-days, has not been in the past the responsibility of a shop analyst and scheduler in the structural shop, but more likely falls into the lap of a welding shop analyst and scheduler.

THE WITNESS: I think I explained that. Didn't I mention that?

MR. SPOONER: This is an additional duty in P&E that normally wasn't assigned --

MR. MURTHA: Simply because there isn't a welder up in P&E.

(Discussion off the record.)

111 EXAMINER ELLIOTT: I will rule at this time that any further evidence on that point will be rejected. Do you have any questions you want to ask this gentleman here on the scope of the testimony he gave?

MR. ELLIS: In light of the Examiner's remarks, no. We had some questions concerning his testimony which, as you say, probably would be trivia, testified on so-called lead shops, how selected and so forth, and we don't think that is exactly in conformance. Therefore, it would be trivia.

EXAMINER ELLIOTT: I think the record is amply clear there is substantial agreement between both parties as to the facts. In other words, there were duties performed by shop schedulists and analysts that are now performed by the P&E division; that the P&E division was smaller and the shop analyst was larger. Now the reverse is true.

MR. ELLIS: We concede that point.

EXAMINER ELLIOTT: So, I think that we will rule for the record that we have ample testimony on factual situation as to movement of these duties in the shipyards.

Now, do I understand your exhibits correctly, that one of them was prepared by you and the others are samples you have gotten from the same places?

THE WITNESS: Right.

EXAMINER ELLIOTT: In other words, that is not all your work?

112 THE WITNESS: No, because I wasn't in P&E when the first job was handled.

MR. MURTHA: Where did you get the records?

THE WITNESS: I took them right from the folders in the office.

MR. ELLIS: Mr. Examiner, we have one query concerning these exhibits.

MR. SPOONER: Exhibit No. 3A, this is the old routing. It shows that this is supplement number fourteen which means that thirteen pieces of paper have preceded it, and also marked that there is additional routings to follow in terms of modification. So, you really don't have the complete package there on the old routing.

MR. MURTHA: All the routing?

MR. SPOONER: You have one piece of paper out of context with the package that was normally issued for that job.

MR. MURTHA: Right.

MR. SPOONER: Whether it is material or not, I don't know.

MR. MURTHA: Not in this case because I have other examples here which are practically the same routine I have gone through.

EXAMINER ELLIOTT: Well, as we said in the beginning, it is conceded that these shop analysts and schedulers duties are now to be found over in P&E to a substantial extent.

113 MR. MURTHA: Your supplement doesn't indicate anything.

EXAMINER ELLIOTT: These are just words.

MR. MURTHA: I am a little bit worried about the impression I might leave on the record. You did testify about a bulkhead job in the past and now?

THE WITNESS: Right.

MR. MURTHA: And your testimony was that analyzing job, routing job, job description, job instruction, and so on, is substantially the same as before.

THE WITNESS: Right.

MR. MURTHA: Of that phase of this particular job.

THE WITNESS: Right.

EXAMINER ELLIOTT: Now from your testimony, you and other shop analysts had other duties besides the one you have described to us that you no longer perform over in P&E, is that correct?

THE WITNESS: We had other duties, primarily, I would say I didn't. My job was breaking down jobs, to analyze a job and get those tickets out.

EXAMINER ELLIOTT: You don't know what the shop planners are doing now?

THE WITNESS: No.

EXAMINER ELLIOTT: You don't?

THE WITNESS: I have an idea but that is from talking to men back in the shop. I have never been in there to see --

114 EXAMINER ELLIOTT: Is that the kind of work you used to do in connection with your other duties?

THE WITNESS: Beg pardon?

EXAMINER ELLIOTT: Did you used to do shop planning work yourself?

THE WITNESS: Yes.

EXAMINER ELLIOTT: At the same time you were an analyst?

THE WITNESS: That is the same thing. When you spoke about job planning, I thought you meant analyzing; that is, shop analyst.

EXAMINER ELLIOTT: What I was trying to find out -- take your old job down in the shop -- and as analyst and scheduler, and then take the place you are working now. Are there some of the old duties that are left behind?

THE WITNESS: As far as I am concerned, with the particular job, no.

EXAMINER ELLIOTT: In other words, you think you are intact?

THE WITNESS: As far as analyzing that job, I say that whole job is there.

MR. MURTHA: He wants to know if you did anything other than that in the past?

THE WITNESS: In connection with job analyzing?

MR. MURTHA: I think you have given him an answer. I want to be sure you understand the question.

115 THE WITNESS: Not to any degree. Not anything different than analyzing the job.

EXAMINER ELLIOTT: Are you doing everything now that you used to do? Everything?

THE WITNESS: Except for the contact with the field and the shop personnel, as far as making sure that they are progressing on that job the way they should be. We were constantly in touch with them for holdups and stuff like that. We are away from that and, consequently, they don't come to us for the answer.

MR. ELLIS: I think it might be well to make it clear these people were permitted to specialize in the shop analyst and scheduler thing,

although they were supposed to analyze the schedule and prepare job standards, you might find an individual who did nothing but analyze. Another man might have prepared standards and something else in a large shop such as the one he was in.

EXAMINER ELLIOTT: I understand you have no further questions?

MR. ELLIS: Yes.

MR. MURTHA: I might clear something up. Were there any shop planners before reorganization in Philadelphia?

THE WITNESS: Were there any shop planners in the yard?

MR. MURTHA: Yes.

116 THE WITNESS: There were shop planners in the yard but they weren't what we would call connected with the ship work. They were in the maintenance shops, carpenters, plumbers, and they are not under the production office. My understanding is they couldn't get analyst ratings because of some argument they had against them.

MR. MURTHA: They were all in the Maintenance Department. Does that clear it up?

EXAMINER ELLIOTT: Yes.

MR. SPOONER: I would like to rebut that statement in that prior to making, your setting up the shop analyst and scheduler rating we had a large number of shop planners in the production shops, a very large number. At the time of converting these people over into the shop analyst and scheduler ratings, they were afforded the opportunity to move laterally without benefit of competitive examinations. Those who were made shop analysts and schedulers subsequent to the automatic turnover did compete for their jobs by taking an examination. But, we did have shop planners; we have had them for years, and fairly large numbers.

MR. ROBERTSON: Mr. Commissioner, if I may interject, again we are getting out in leftfield. I may say your question directly said prior to this reorganization were there any job planners in the shipyard. The answer is no. There were none with the exception of the maintenance shop. Back in '54, while the transition was taking place, ultimately, I would say 1956, there were no shop planners in the Philadelphia Navy

117 Shipyard because the Zones book, July 1957, will point out there is nothing listed for shop planner, Philadelphia Naval Shipyard.

EXAMINER ELLIOTT: I think we have a pretty clear picture of what happened. Is there any further testimony beyond the point that I mentioned?

MR. MURTHA: I want to clarify something in the charts.

EXAMINER ELLIOTT: All right.

(Witness excused.)

MR. MURTHA: I would like to ask Mr. Robertson to take a look at both charts. Turning your attention for the moment to the one that is marked "before" going to the last section which is labeled "shop" at the top. There is listed there seven or eight items of duties which I believe the testimony shows were performed by analysts and schedulers.

MR. ROBERTSON: I think that would be clarified to the extent that the Commissioner here raised the question of the last witness to the degree of work that he performed and I think, to say it on a general basis, speaking shipyardwise, and the analyst and scheduler rating although in shops of large nature, analysts and schedulers were permitted to specialize, such as scheduling operations or the analyst operations or doing standards work. But on the whole picture, as far as the analyst was concerned, they were doing the greater part of the job process card

118 breakdown which now --

MR. MURTHA: They were doing all the --

MR. ROBERTSON: In other words, your process card is now encompassed in one line saying "Prepare job order."

MR. MURTHA: Let me ask the questions so I can get my thinking straight.

Under the chart that is labeled "before", under the word "shop", the duties that are listed there were performed by analysts and schedulers, right?

MR. ROBERTSON: Right.

MR. MURTHA: All analysts and schedulers were not engaged in making job process cards. There were some of them that had some

standards work?

MR. ROBERTSON: Yes.

MR. MURTHA: Some had some scheduling work?

MR. ROBERTSON: Yes.

MR. MURTHA: The greater bulk of them were engaged in job order work?

MR. ROBERTSON: I would say on a greater percentage of their time -- closer to say, in the 80 or 90 percent of their time they were doing this work and maybe on a day occasionally or a few hours occasionally they would be called to assist in formulating standards or assisting the scheduler in --

MR. MURTHA: Would you indicate line by line which work went over to P&E? In other words, look at the "before" and look at the
119 "afterwards".

MR. ROBERTSON: You are speaking of below the dotted line now?

MR. MURTHA: Below the dotted line. Start over with the last column, that is "before" chart.

MR. ROBERTSON: I would say, number one, "Prepares process cards" which was the actual bulk of the analyst's work in which he was analyzing the job from the original routing in which he prepared his line items for work sequence. The operation that was to be done was transferred over into P&E where it says "Prepare job order process cards."

MR. MURTHA: Take the next.

MR. ROBERTSON: "Assigns start and completion dates" was generally handled by one man in a large shop or so to do the scheduling or may be done in a smaller shop basis by the actual analyst himself as part of his assigned duties, now being done in production engineering division.

"Assign standard man hour allowances." This is encompassed in preparing job order process cards. P&E people now do this part of the work, and prepare the instruction cards. The instruction card, per se, has been abolished to the extent it is again encompassed in the job order process card by a multilith, or what have you, reproduction process.

120 "Maintains file or process cards." This is done by the man in a fashion where they have their own system in P&E of filing the process cards when the jobs are routed to the shops.

"Maintain file of instruction cards." This has been done away with but encompasses the one going forward as far as the job order process card.

"Request inter-shop services." This is again done on a major basis in the prepare job order process cards, but, if we are going down a little later on and talk about the work assist, which is a minor item, which is done in the shop planning now as a shop planner function where he says "request minor assist, schedule inter-shop work" on the shop card of after.

"Submits delinquency reports." This is done back in A&S, the shop planner himself and not going any place else, but it is done in a different fashion as we have known it from delinquency reports in this "before" section.

"Reports on inter-shop basis." That is included in shop planning functions and I assume this is part of the duties now of the shop planner.

"Prepares shop workload data." As was pointed out by Mr. Spooner earlier, this is now being done by computers from the cards that are key-punched out by the job process card through the planning and estimating section and is taken care of by the various computing records in the shipyard. That just about concludes it, because the performance work is still in the lining out --

121 MR. MURTHA: The reason I ask you these questions on the "before" shop, under shop, is there are a whole lot of duties listed at the bottom.

MR. ROBERTSON: Right.

MR. MURTHA: Yet only the top one prepares process cards appears on the "after" chart under Planning Department.

MR. ROBERTSON: As I pointed out, many of these things are encompassed now in the prepare job order process card.

MR. MURTHA: In other words, you think prepare job, JO process cards, M&P's, material requisitions, is as it appears now in the "after"

chart under Planning Department and under the dotted lines, is an inadequate -- is not a complete description?

MR. ROBERTSON: Well, it is a description inasmuch as Mr. Spooner pointed out earlier, we had three pieces of paper before. They are now condensing them into one; regardless of how long the one is written or reproduced, it is still encompassed in the one heading. But it does take in all other actions done by the analyst while he was analyzing the work in the shop.

MR. MURTHA: In other words, in the "after" shop, the words "prepare JO process cards" encompasses a good many of the things listed in the "before" chart under the shop column?

MR. ROBERTSON: Yes, sir. I would say the heading "Prepares process cards" was an 80 percent function of the shop analyst and scheduler department in the shipyard in its entirety.

EXAMINER ELLIOTT: Any questions?

MR. SPOONER: One addition. Possibly the assign, start and complete dates in the shop column on the "before" chart does appear under the production engineering division now as one of their duties.

MR. ROBERTSON: I thought I mentioned that.

EXAMINER ELLIOTT: I think he did, too.

Well, gentlemen, I think we have the picture.

MR. MURTHA: One more thing, just very brief. I would like to get over, at least that appealed to me, how many shops are there in each shipyard, about?

MR. SPOONER: Averages seventeen.

MR. MURTHA: What is the size of the shops?

MR. SPOONER: Varies, sixty to three thousand.

MR. ROBERTSON: Any where from a small forge shop having 25 people to large structural shops. Could be several thousand people.

MR. MURTHA: Three thousand?

MR. ROBERTSON: About three thousand.

MR. MURTHA: I think it is important to have that in mind too when we talk about shops -- to the uninitiated such as myself. I think of a place with three or four people, but these are entire buildings, as I understand it. Are they?

AGENCY EXHIBIT NO. 1

DEPARTMENT OF THE NAVY
BUREAU OF SHIPS
WASHINGTON 25, D.C.

In Reply Refer To
BUSHIPS 4850.14
Ser. 730-39
17 November 1959

BUSHIPS INSTRUCTION 4850.14

From: Chief, Bureau of Ships
To: Commanders, All U. S. Naval Shipyards
Commanding Officer, U. S. Naval Repair Facility, San Diego
Subj: Reduction in costs in Production Planning and Control Program; guideline actions to effect
Ref: (a) Production Control System Procedures Manual for Naval Shipyards (NAVSHIPS 250-746)
Encl: (1) Guideline changes in Procedure for Planning and Scheduling Productive Work With Emphasis on Elimination of Duplication of Planning and Unnecessary Papers
(2) Guideline changes in Procedure for Assist Work
(3) Guideline changes in Work Measurement With Emphasis on Quality and Planning and Estimating Participation
(4) Guideline establishment of Production Engineering Division
(5) Plan of Action for Refinement of Production Planning and Control Program

1. Purpose. The purpose of this Instruction is to promulgate guideline changes in the Production Planning and Control Program which, when fully developed by naval shipyards, should eliminate duplications in the job planning process and reduce overhead costs. Also, these changes should result in ultimate reduction in direct labor costs.

2. Conflicting Directions. In instances of conflict between this Instruction and reference (a) or other Bureau directives, the principles of this directive shall govern. Directives at variance with this Instruction will be modified at a later date.

3. Background. Over the past several years the cost of constructing, converting and repairing ships has risen at an alarming rate. In an effort

to reduce the overhead cost of the Production Planning and Control Program in naval shipyards and yet achieve the maximum in direct labor cost savings made possible by the Program, the Chief, Bureau of Ships has taken the following actions during the past few months:

a. Contracted with Cresap, McCormick and Paget, Management Consultants, to audit the Production Planning and Control Program and make recommendations;

b. Appointed a Special Committee to investigate methods of reducing the cost of planning effort in naval shipyards and make recommendations. This instruction initiates implementing action for many of the recommendations made by the two above groups.

4. Discussion. The Chief, Bureau of Ships has determined that there will be no change in the fundamental aims of the Production Planning and Control Program, i.e., efficient operation of naval shipyards through adequate planning, scheduling and directing of manpower, material and equipment to accomplish the tasks assigned. The Work Measurement element of Production Planning and Control is considered essential to the Program and should proceed with more emphasis being placed on quality. However, the paperwork and fine controls generated by the current Production Planning and Control Program Instructions appear to be much greater than necessary and action must be taken to reduce these to within practicable limits.

5. There is considerable overlapping of planning effort between the Planning and Estimating Division and Shop Planning. Steps must now be taken to eliminate this duplication by having more detailed work specifications emanate from Planning and Estimating. This in turn will require that Planners and Estimators issue work specifications which are adaptable to the continued development of standards and use standards already developed. A change in philosophy is required on the part of both Planning and Estimating (writing jobs based on standards and in Job Process format) and Production (in accepting detailed Planning and Estimating specifications). Success in the reduction of overhead by reducing the duplication in planning effort is dependent upon the cooperation and coordination

of Planning and Estimating and Production. Organizational line barriers should not be allowed to prevent this cost reduction from materializing.

6. The shipyards are currently using various and assorted procedures for handling "assist" type work between shops. The procedures generally in use for small plannable and unplannable assists result in excessive costs, incorrect charging, overmanning and over inflation of performance. It is necessary that this situation be corrected.

7. The industrial engineering functions of the shipyard which pertain to production work are diffused and should be concentrated in a new Production Engineering Division of the Production Department in order to be more effective. This includes the assigning of shop standards personnel to the Production Engineering Division to further standards development.

8. The present system of timekeeping and labor cost distribution under the Two-Card Timekeeping system requires Leadingmen to spend an unnecessary amount of time performing the timekeeping function. Relieving the Leadingman of this function could result in an increase of as much as 20 to 25 percent in supervision. The timekeeping data would be taken from the muster sheets by clerks, giving input data to the Automatic Data Processing System (ADPS) as appropriate for the yard. The Comptroller of the Navy has approved the Bureau's request to authorize the use of a muster sheet system in connection with the Two-Card Timekeeping System. Detailed instructions regarding use of the new muster sheet will be issued under separate cover.

9. The ADPS is a powerful tool for integrated management and reduction of costs. With yards now making progress in ADPS, it is essential that it be used to the utmost in Production Planning and Control. It is expected that new applications will be developed which will require changes in some Production Planning and Control procedures. The Bureau considers it essential that high priority be given to ADPS applications of Production Planning and Control and that promising applications are not abandoned because of presumed inflexibility of Bureau instructions. In the

preparation of new local Production Planning and Control procedural instructions as discussed in paragraph 10 below, it is desired that full advantage be taken of respective yards progress in ADPS. In order to ensure better coordination of the overall computer program at the Bureau level, a larger portion of the computer organization is being concentrated under the Assistant Chief for Field Activities.

10. Additional guidance concerning paragraphs 4 to 7 above are given in enclosures (1) through (4). In implementing the principles contained in this instruction, and others to follow on timekeeping and ADPS, the Bureau expects that each addressee will appoint a high level committee, with working groups as necessary, to prepare new local Production Planning and Control instructions. Since Production Planning and Control procedures cross department and division lines, the committee should report directly to the Shipyard Commander. This will ensure that decisions are based on considerations for the overall yard's efficiency and service. It is recognized that there will be variations in instructions from yard to yard depending on local conditions. However, and similar to the requirements prior to approval of shipyard computer installations, all local Production Planning and Control procedures and instructions will be evaluated and approved by the Bureau. This policy will permit variations in procedures to meet local requirements, but at the same time will ensure that the basic principles are adhered to and are uniform throughout all yards. After implementation of the new procedures, regular audits will be made annually by the Bureau of Ships Inspector General and special audits as required. Representatives of the Bureau will visit the yards during the next few months while the new procedures are being developed in order to gain first hand knowledge of local conditions and assist the yards as practicable.

11. Action. Addressees are requested to appoint immediately a high level planning committee (the chairman should be relieved of all other duties if practicable) to develop new Production Planning and Control procedures and instructions embodying the principles contained in this Instruction but adapted to local conditions. The committee should consist of representatives

of the various departments and divisions involved in the Production Planning and Control Program (Production, Planning, Supply Management Planning and Review, and Comptroller) but should report directly to the Shipyard Commander. Enclosure (5) is a plan of action for refinement of the Production Planning and Control Program. Addressees are requested to set goals to complete the actions indicated by the dates given in enclosure (5). Addressees are authorized to start developing and installing the procedures at once. Starting 1 January, brief, essay type, monthly progress reports should be made to Chief, Bureau of Ships, Code 730. The Bureau will certify that a shipyard has a satisfactory Production Planning and Control Program after approval of local instructions and an on-site evaluation. A preliminary evaluation will be made by the Bureau prior to full scale cutting over to the preparation of all Job Order/Process Cards in the P&E Division. Attention is invited to paragraph 2 of enclosure (1) in that after suitable indoctrination and on a phased basis the Planning and Estimating Division will prepare Job Order/Process Card work documents. It is suggested that a few Shop Analysts and Schedulers from one or two shops be assigned to the Planning and Estimating Division at once to assist in developing the new planning procedure. One shipyard has already gained some experience by this method. While formal approval of a yard's Production Planning and Control Program will not be made by the Bureau until after a majority of the revised procedures are developed and proven, yards should take steps immediately to effect those less involved actions which would reduce costs. These actions should be reported in the monthly progress report. New instructions covering Work Measurement should not be prepared in final draft form until after the Work Measurement Seminar is held in January as discussed in Enclosure (3). However, a general indoctrination of Planners and Estimators in the use of standards should begin at once.

/s/ M. J. Lawrence
Assistant Chief of Bureau
for Field Activities

ENCLOSURE 1 TO AGENCY EXHIBIT NO. 1

BUSHIPSINST 4850.14
17 November 1959

Enclosure (1)

**GUIDELINE CHANGES IN PROCEDURES FOR PLANNING
AND SCHEDULING PRODUCTIVE WORK WITH EMPHASIS
ON ELIMINATION OF UNNECESSARY PAPERS AND
DUPLICATION OF PLANNING**

1. Introduction. An investigation of the job planning process in naval shipyards indicated that a reduction in the costs of the planning effort could be accomplished by the following:

a. Reducing the non-profitable, overlapping and duplicating planning efforts of the Planning and Estimating Division and Shop Planning Offices. Job Order/Process Cards should be issued at the Planning and Estimating level.

b. Reducing the number of Process Card items (former I.C.'s) by increasing their coverage and setting up a limitation goal on their minimum size. It is considered that the cost of issuing one I.C. and the actions triggered by its issuance is too great for small increments of work.

c. Using the Job Order/Process Card as a means of assigning work to Leadingmen in lieu of Instruction Card (shop to issue I.C.'s on an exceptional basis where more detailed information is required). Preferably the Job Order/Process Card should be handwritten to reduce clerical effort.

d. Using "master" service Job Order/Process Cards for small assist work and standard Job Order/Process Cards for repeat type jobs where practicable.

e. Reducing the amount of detailed shop scheduling and resultant delinquency reporting.

Exhibit (1) lists the number of employees in the planning effort as of January 1959; Exhibit (2) shows how the cost of this effort is spread throughout the yard and exhibit (3) is the Bureau's estimate of possible reduction.

2. General. After suitable indoctrination and on a phased basis the Planning and Estimating Division will prepare Job Order/Process Card work authorization documents encompassing the work definitions that are now contained in Job Orders and Process Cards. This document is to be prepared on reproducible masters by Planners and Estimators augmented as necessary by the assigning of Shop Analysts and Schedulers to the Planning and Estimating Division. Sufficient quantities of this document will be reproduced as necessary to meet the needs of the entire productive cycle including in most cases the use now made by the shops of Instruction Cards to inform the Leadingman and mechanic of the work they are to perform.

3. Procedural. Upon receipt of customer requests, and after the Work Booklets have been prepared as presently, the Job Planning Branch of the P&E Division will prepare work authorization documents containing all the necessary identification as now contained on the Job Orders. The work instructions portion of the document will be written by work sequence in a work step manner similar to that now contained on shop Process Cards prepared in sufficient detail to definitely inform the Leadingman and mechanics of the work requirements (without requiring issue of I.C.'s except where more detailed information is necessary). However, these steps or line items, will as a general rule cover work units of a four manhour minimum as practicable. As a goal any smaller breaking points in the job will be combined with other portions of the work as necessary to meet this minimum of four man-hours. Each of the shops involved in the work will be indicated, and the work requirements of each of the shops will be defined. A labor estimate for each step of the job, for each shop involved, will be assigned using standards made available by the new Methods and Standards Branch. Where standards are not available, estimated "should cost" man-hours will be used. In addition, it will be necessary to determine, at least monthly, the various shops' performance factors and place an estimated "will cost" figure on copies of the Job Order/Process Cards other than those going to the shops. This will ensure that adequate funds

are made available to cover the actual cost of the work. The performance factors of the shops should be arrived at by mutual agreement between the Planning and Production Officers (or their representatives) and the individual Planners and Estimators of control planners be given copies of these factors. Material estimates will also be made by the Planners and Estimators and all known material requirements will be initiated at this level. The use of AMRL's will be kept to a minimum in accordance with BuShips Instruction 4490.2 of 16 July 1959. In order to keep abreast of the effectiveness of AMRL's and reduce costs to the Navy (if not to the customer) the originators of AMRL's should also be the persons who take the releasing action at the end of an availability. They should be subject to audit regarding cost to the Government for handling and disposing of unused AMRL material. It is mandatory that a sound material management plan be developed.

4. The Comptroller Department will keep the customer funds commitment file in accordance with BuShips Instruction 5450.14A and will after analyzing these files provide timely reports of same to the Planning and Estimating Division. This Division will insure that no work authorization is issued against a customer order in excess of available funds. The Comptroller will continue to supervise determination of cost of operations and securing reimbursements for work performed. Early "fixed pricing" of work to the customer in accordance with NIF Handbook, paragraph 4206, is desired. It is desired that the Comptroller gather all of the financial, performance and variance data concerning the accomplishment of productive work and furnishing of material for same; analyze these data and make suitable reports and recommendations to management. If the Comptroller Department is used properly and especially with ADPS there should be a minimum of record keeping in either the new Production Engineering Division or the P&E Division.

5. The issuing of early work instructions to the shops is mandatory as P&E will be developing the detailed jobs and the shops will not be able to start work without P&E Job Order/Process Cards. The current schedule

of pre-arrival inspections should be continued. This will permit the shops to receive the detailed work specifications earlier than at present from Shop Planning as P&E will be writing Job Order/Process Cards from the original thought process, rather than write a Job Order (including its supplements) to be followed a few days later by Process Cards and I.C.'s prepared in Shop Planning.

6. It is emphasized that the shipyard central scheduling function for productive work is the responsibility of the new Production Engineering Division. Central Scheduling is responsible for developing ships work schedules which in turn requires coordination of the several departments. Central Scheduling will issue preliminary work schedules (to be followed by firm schedules) to Design and P&E Divisions and Supply Department to be used in determining plan issue, Job Order issue and material delivery dates. In addition, preliminary schedules must be issued to the Repair Superintendent and shops for review prior to issue of firm schedules. Firm schedules must have concurrence of the Repair Superintendent prior to issue as he is responsible to the Production Officer for all ship and shop work. Also, concurrence of the shops should be obtained.

7. Where the dates established by Central Scheduling cannot be met, it will be necessary to collaborate as practicable in setting attainable dates. Central Scheduling will furnish inter-shop start and completion dates as necessary to shops involved. Internal shop dates will be established by the shops only as they require. This should result in the reduction of the amount of detailed scheduling since Central Scheduling will be setting inter-shop dates on line items of increased size and the shops are given greater selectivity in determining their need for internal shop scheduling. Central Scheduling must schedule work so as to achieve the most economical and efficient operations of the shops and shipyard as a whole but tempered by meeting needs of the customer (Forces Afloat either directly or indirectly) so far as practicable. The Planning and Estimating Division must obtain concurrence from Central Scheduling and other Production Department representatives as determined locally before accepting work.

It is necessary that work be accepted and scheduled in such a way as to produce a satisfactory combination of efficient production performance and adequate service to the Fleet.

8. While time does not permit the process engineering of every Job Order/Process Card, it is mandatory that individual high value jobs be studied for methods and process improvements and changes be fed to P&E for use in writing the jobs, and Central Scheduling for scheduling, based on improved methods. All repeat type jobs should be process-engineered immediately and information on these should also be fed to P&E and Central Scheduling. In this connection new work methods should be thoroughly discussed with shop supervisors. Schedules should not be based wholly upon historical precedent but should reflect new methods and conditions which actually exist aboard specific ships. Feed back of information from Design, P&E, Supply and delinquency reports from the shops showing dates which cannot be met, should result in schedule changes and new manpower loading of the shops. ADPS will facilitate the correcting of schedules and manpower loading. Local procedures being developed should consider use of ADPS. It is considered that the Material Group System being developed at yards working primarily on new construction is compatible with the above comments on scheduling. The importance of scheduling several shops' work in small compartments cannot be overly emphasized, but this should be done by Central Scheduling.

9. Prior to reproduction, the Job Order/Process Card reproducible masters will be routed to Central Scheduling for assignment of dates. After reproduction, copies of the work authorization documents will be forwarded to Repair Superintendent, Production Engineering, Progress, Comptroller, Shops and other groups as determined locally. Since the man-hours for the shops will now be based on standards (or should cost) hours from Planning and Estimating the Direct Labor Budget will be arrived at by P&E and will in fact be a budget for the shops to live within. The arriving at a Direct Labor Budget based on Shop Planning estimates will no longer be a requirement and Production will not be involved in gathering data for funds negotiation.

10. The shops will utilize copies of the Job Order/Process Cards in lieu of the instruction cards in all cases possible. Where necessary to the proper performance of work within the shop, instruction cards can be prepared giving more detailed work instructions and assigning shop section scheduled dates in order to meet the requirements set forth in the Job Order/Process Cards. Additional instruction cards may also be prepared when necessary to request work from assist shops where requirements are not specifically spelled out in the Job Order Process Cards (see enclosure (2)). It is stressed that in all instances the work contained in each line item on the Job Order/Process Card and on each individual instruction card when used, should have as a goal a minimum of four hours worth of work as practicable. There will be no time span limitation as to the duration of Job Order/Process Card line items (with the exception of assist work I.C.'s written for two weeks as covered in enclosure (2)). Also, the writing of instruction cards in the shops should be the exception rather than the rule. Exhibit (4) is an example of the planning documents flow.

11. Delinquency reports will continue to be used to highlight conditions which indicate scheduled completion dates are in jeopardy (total job or inter-shop dates). It is emphasized that the concept of delinquency reporting is that of preventing failure in meeting scheduled dates, not to report merely dates which were not met. This approach coupled with the larger increments of work being scheduled will result in a reduction in the amount of unnecessary and ineffectual delinquency reports now being generated. Delinquencies should be reported to two levels in the organization: (a) by Leadingmen within the shops on a very informal basis indicating to higher supervision and shop planning the problems involved in meeting the date assigned for a work item (if by such action the completion date will be met the delinquency will be dropped), (b) by the shops on a Delinquency Summary Report format to Central Scheduling if inter-shop line items or job dates will be missed. Also, P&E, Design or Supply will make reports to Central Scheduling if it is anticipated that jobs cannot be worked as scheduled due to lack of work specifications, plans or delivery

of material as appropriate. The forwarding of these delinquency reports to Central Scheduling will permit the rescheduling of jobs and inter-shop line items. Job Order and inter-shop line item dates missed, although not anticipated, must also be reported to Central Scheduling for rescheduling as practicable. It is considered that this method of delinquency reporting is adaptable to ADPS and should improve shop manpower loading.

12. Action. The following principles are to be followed in developing local procedures for planning and scheduling productive work:

- a. On a phased basis consolidate the Job Order and Process Card preparation functions in the P&E Division augmenting the staffing of the Job Planning Branch with Shop Analysts and Schedulers as necessary.
- b. Revise the Job Order format to accommodate Process Card line item type of work analysis. Exhibit (5) is an example of the Job Order/Process Card format.
- c. Establish goals for line items to a minimum of four man-hours of work wherever practicable.
- d. Train Planners and Estimators in the use of and development of standards.
- e. Initiate a program for process-engineering high value jobs and all repeat type jobs.
- f. Revise the scheduling procedures to reduce unnecessarily detailed scheduling by the shops and strengthen central scheduling.
- g. Restrict formal delinquency reporting requirements to Job Orders, all inter-shop dates, and specially pre-designated critical events.
- h. Issue Job Order/Process Cards to Leadingmen in lieu of Instruction Cards in all cases possible.
- i. Issue "master" service Job Order/Process Cards for small assist work (see enclosure (2)) and standard Job Order/Process Cards for repeat jobs where practicable.
- j. Develop a sound material plan for ordering, follow-up and delivery of material (and disposing of unused material).

k. Reduce the amount of data gathering record keeping and analyzing in P&E and Production Engineering by making more effective use of Comptroller Department and ADPS.

NOTE:

It is emphasized that the following Notices and Instructions concerning improvement of Supply Management in naval shipyards remain in effect:

- a. BUSHIPS NOTICES 4490 of 13 April 1959, 7323 of 25 June 1959 and 4850 of 29 September 1959.
 - b. BUSHIPS INSTRUCTIONS 4490.2 of 16 July 1959, 4490.3 of 5 August 1959 and 4490.4 of 8 August 1959.
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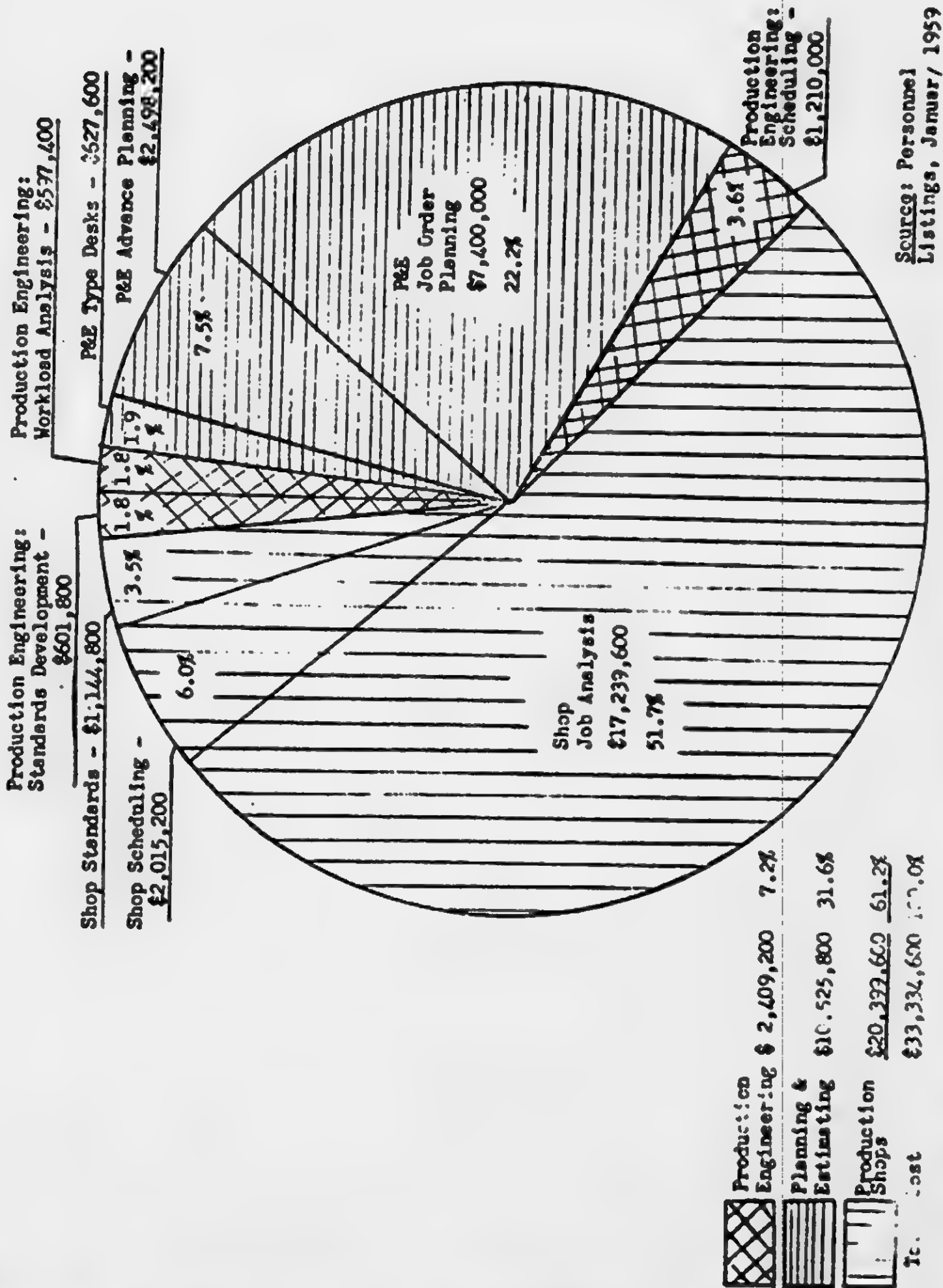
EXHIBIT (1) TO ENCLOSURE (1) TO AGENCY EXHIBIT NO. 1

DISTRIBUTION OF PERSONNELSPENDING THE SHIPYARD PLANNING DOLLAR

	Ports	Bsn	Nyk	Phlla	Norva	Chasn	LBeach	SFran	Mare	Puget	Pearl	Total
SHOPS												
Job Analysis	191	180	253	181	199	119	125	147	184	229	117	1925
Shop Scheduling	23	22	29	22	24	15	15	17	22	26	14	229
Standards Development	25	22	16	19	16	17	13	7	15	13	7	170
Clerical Support	116	107	155	104	132	86	71	95	98	177	54	1195
Total	355	331	453	326	371	237	224	266	319	445	192	3519
PLANNING & ESTIMATING												
Type Desks &												
Advance Planning	24	41	41	46	37	31	25	39	21	31	26	362
Job Order Planning	80	90	131	67	99	57	67	25	118	114	46	894
Funds Control	5	8	7	5	18	6	3	3	6	2	6	69
Clerical Support	35	47	25	22	43	26	16	38	49	23	16	340
Total	144	186	204	140	197	120	111	105	194	170	94	1665
PRODUCTION ANALYSIS												
Central Scheduling	18	12	26	16	16	8	10	15	10	23	1	155
Wkld. Analysis &												
Forecasting	8	7	18	4	12	9	8	10	9	10	8	103
Standards Development	7	8	5	7	6	6	7	16	6	9	3	80
Clerical Support	5	8	4	3	6	6	3	3	5	4	3	50
Total	38	35	53	30	40	29	28	44	30	46	15	388
Grand Total	537	552	710	496	608	386	363	415	543	661	301	5572

Source: Personnel Listings,
January 1959

SHIPYARD PLANNING DOLLARS



Source: Personnel
Listings, January/ 1959

ORD-CHST-1530 (Rev. 8/56)
 CHARLESTON NAVAL SHIPYARD

JOB ORDER

ESTIMATE NO.

DATE

(59. RE)

12/17/56

SHIPMENT/PROJECT

USS MEREDITH

SHIP NO.

20-890

ITEM NO.

93

DATE DEL. REQ.

DATE J.D. REQ.

12/18

DATE MATL. REQ.

1/5

PROJECT TYPE

SUBJECT TYPE

OBJECT CLASS

REGULAR OVERHAUL

SHIP NO.

34

SHIP PROJ. NO.

136

ALLOT. PROJ. T.

APPROPRIATION

BUDGET

EXPEND. ACCT.

15001

ACT'L. NO.

COST CL.

WORK UNDER COAL. OF SUPE

212

SHIPV. PGE

SMITH

J.O. CODE

08-550-3401

STATUS

REVISION

SUPPLEMENT

FI-
MAL

ESTY FOR

JOB TITLE

REPLACE VEGETABLE LOCKER

WORK SPECIFICATIONS:

REMOVE & SCRAP CORRODED VEGETABLE LOCKER -

MIL. DE. - FE² 45, STD. FABRICATE & INSTALL NEW

ALUMI LKA. BUSHIPS PLAN 334-6410312, THREE BIN

TYPE. SAME LOCATION.

17 - ACCOMPLISH

11 - PROVIDE CHIPPING SERVICE

26 - " WELDING

71 - PAINT AS REQUESTED

72 - PROVIDE RIGGING SERVICE

SHOP	NO. OF COPIES	DATE TO COMPLETE	EST. HOURS
600			
300			
J.O.D.			
COV.			
04			
06			
07			
10			
11	3		1
17	3		7
21			
23			
25			
26	3		1/2
27			
31			
38			
41			
51			
52			
53			
71	3		1
72	3		1/2
81			
86			
87			

PREPARED BY

JONES

PROJECT NO.

2765

DATE

12/17/56

APPROVED BY

Smith

12/17/56

DATE

200

10

WORK COMPLETE

DATE

DATE SATISFACTION

DATE

140

WORK COMPLETED AND ALL EXCESS MATERIAL DISPOSED OF

(End of Shop)

60

400

TITLE: Replace Vegetable Locker						
SHIP OR OBJECT:	JOB ORDER NO:	SUPP. NO.	ASSIST REQUEST	SA	SECTION	INST. CARD NO.
DD-890	08-550-3401		To Ship	17	O.S.	3
ESTIMATED B/W	SCHEDULED DATES		REVISED DATES		ANALYST PLANNER CODE NO.	PROGRESS PLANNER
4	START 1/14	COMP. 1/16	START	COMP.	Sykes	Parker

WORKING INSTRUCTIONS/MATERIAL/PLANS:

Install one (1) Aluminum Vegetable Locker, three bin type, size-64" high, 72" wide, 30" deep, main deck, frame #45, stbd.

Agc!

LEADINGMAN'S COPY

DATE	LDGMN. CODE	CHECK NO.	HOURS	DATE	LDGMN. CODE	CHECK NO.	HOURS
1/14	14	17-549	3				
	"	17-820	3				
TOTAL-			6	TOTAL-			

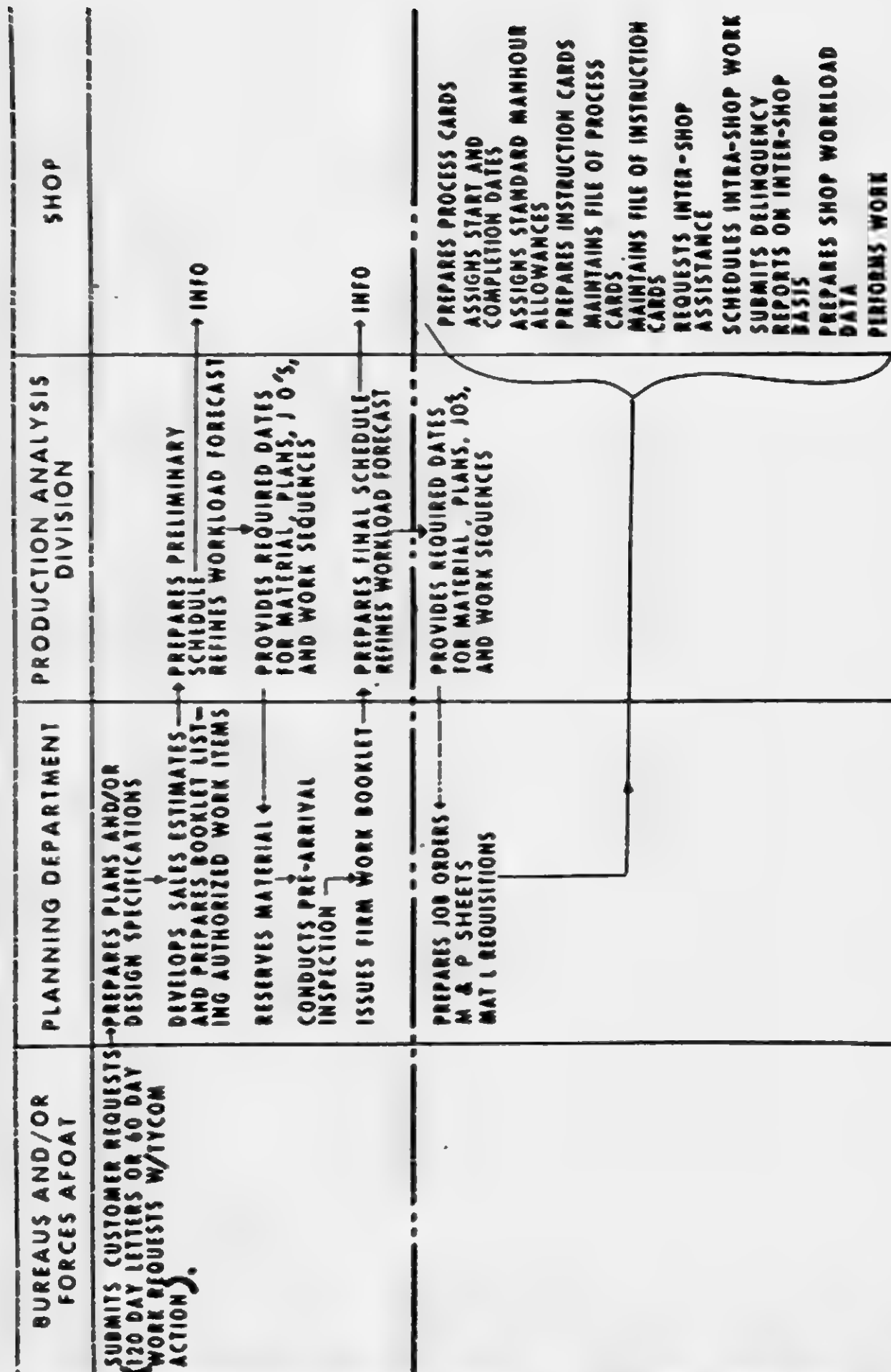
GND-CRSTB-1007 (Rev. 6/56)

STATE HOURS AND REMARKS:

WELDER SCHEDULED TO START AT 1000. DID NOT
ARRIVE UNTIL 1030. 2 MEN LOST 1/2 HOUR EACH.

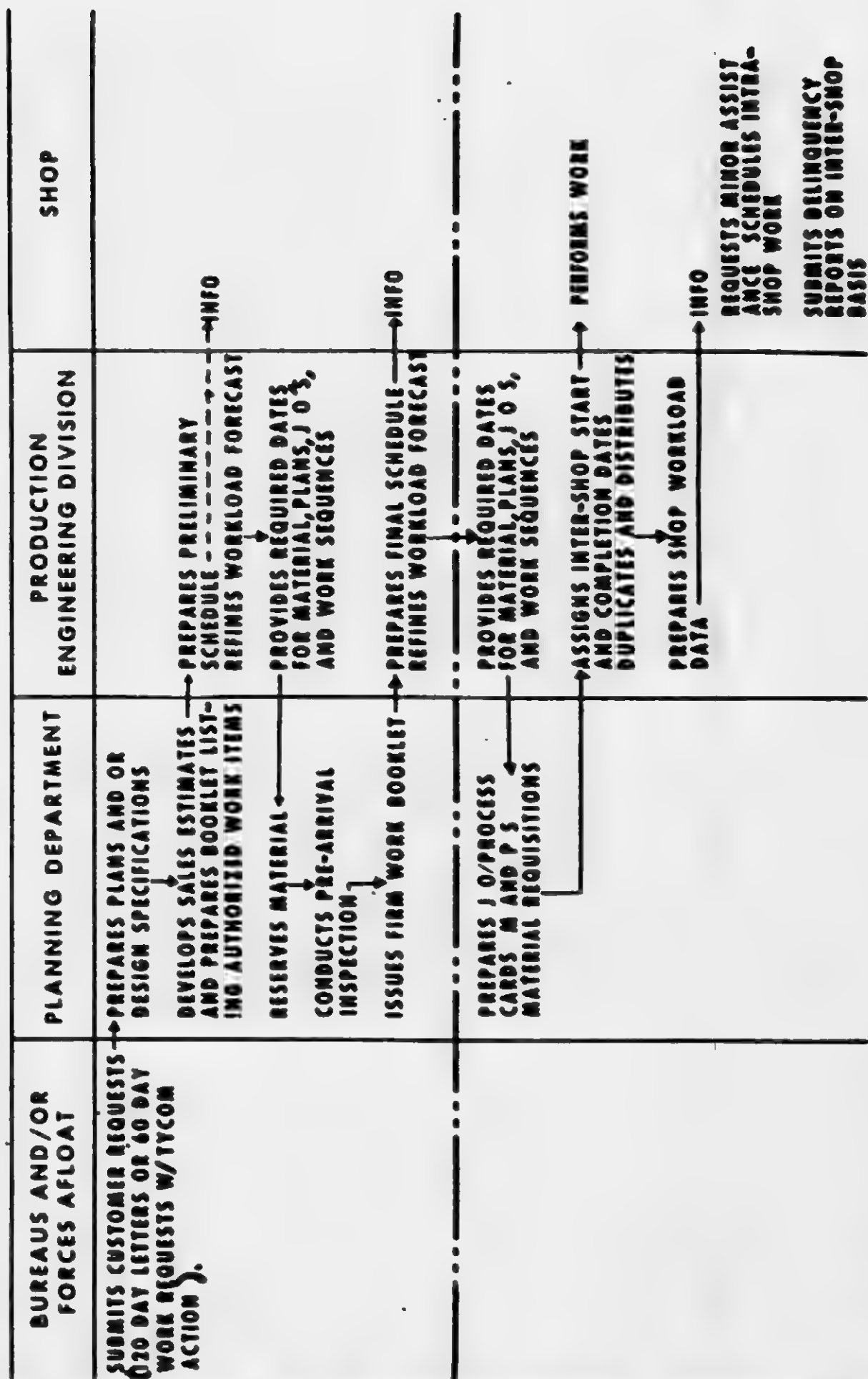
BEFORE (1954 - 1959)

PRODUCTION PLANNING FLOW PROCESS CHART



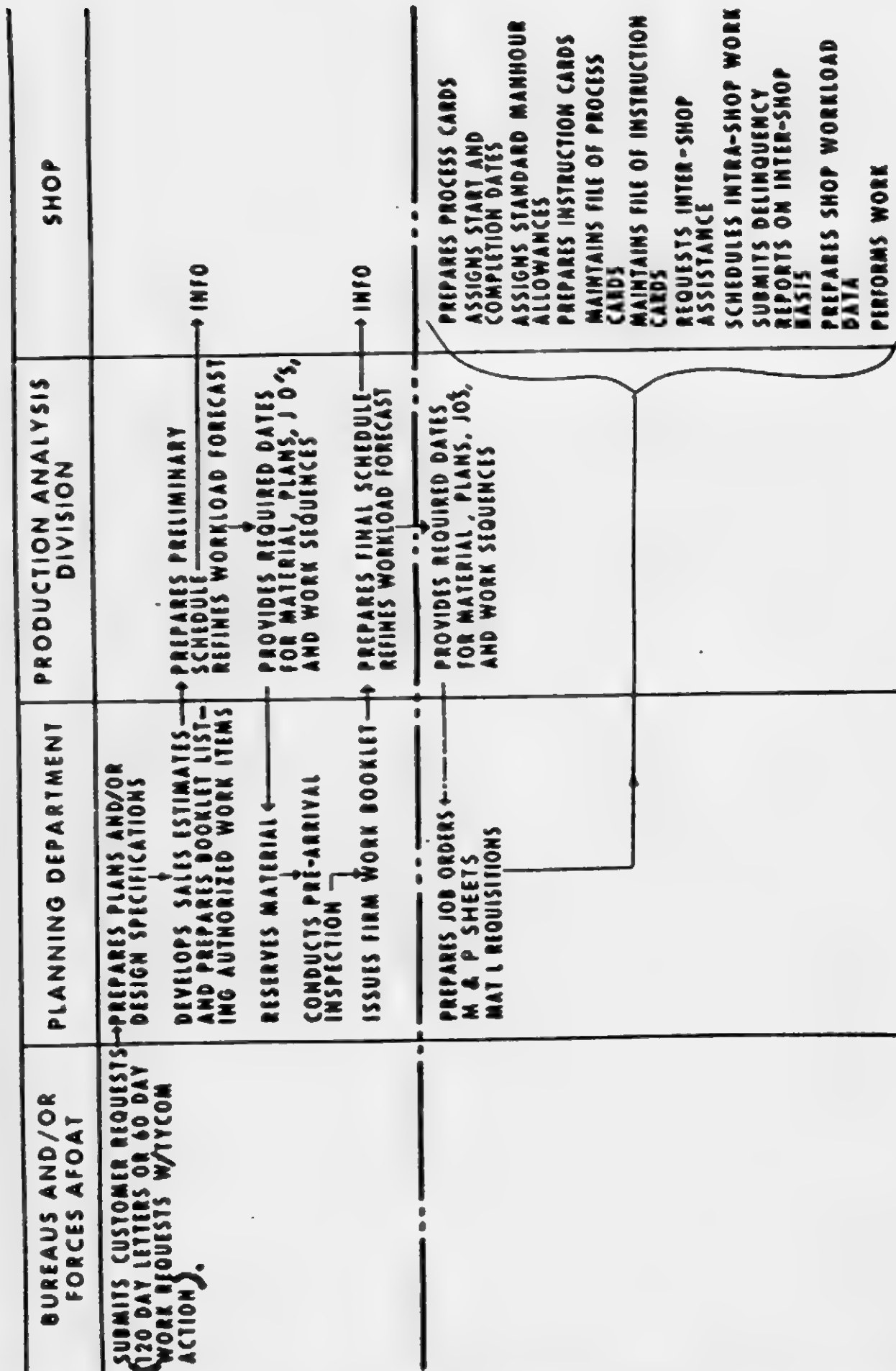
AFR (1959-1960)

PRODUCTION PLANNING FLOW PROCESS CHART

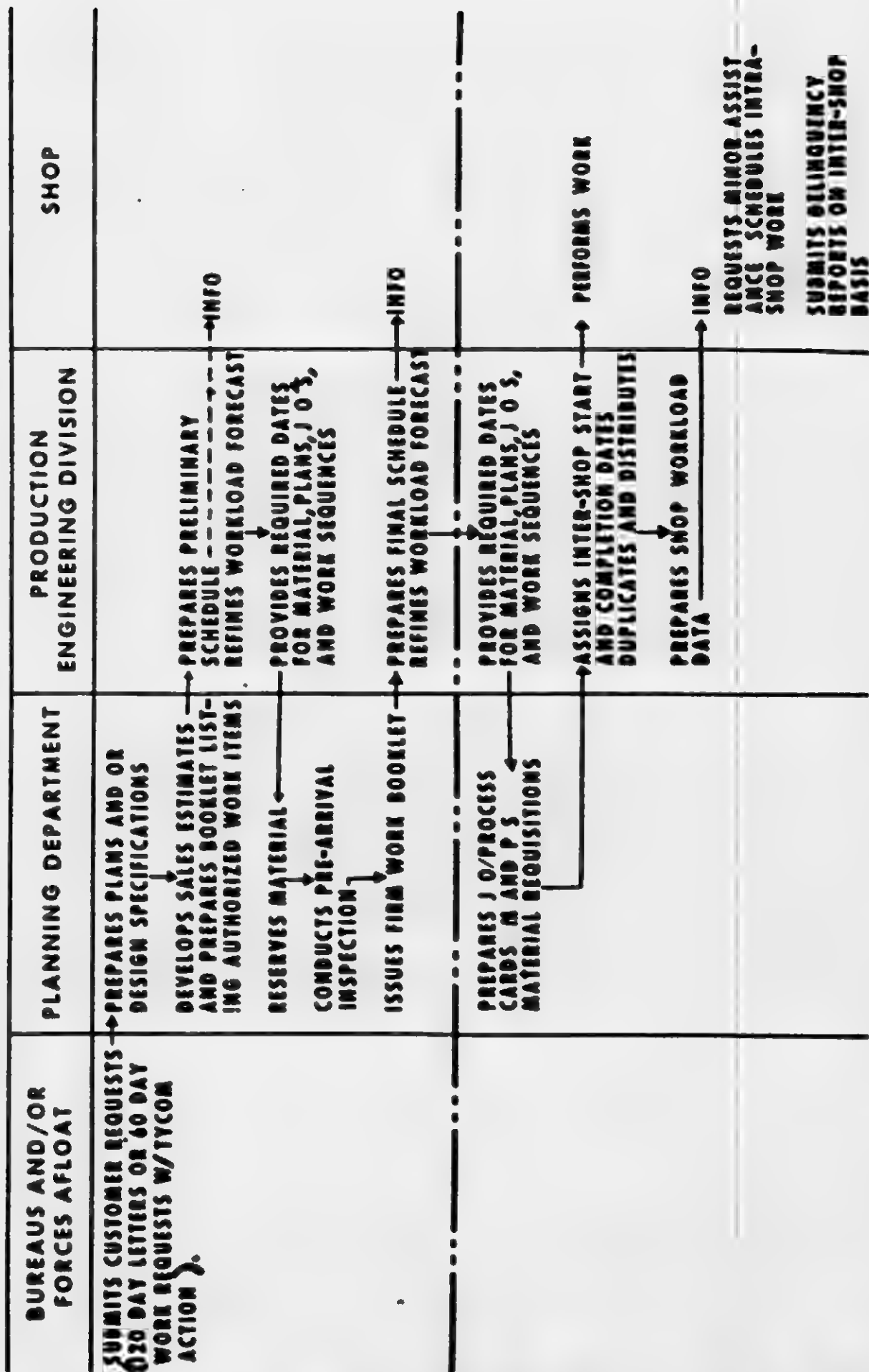


BEFORE (1954 -- 1959)

PRODUCTION PLANNING FLOW PROCESS CHART



AFTER (1959-1960)

PRODUCTION PLANNING FLOW PROCESS CHART

Job Planning Work

Before (1954-1959) After (1959-1960)

Planner and Estimator	Shop Anal. and Scheduler	Planner and Estimator	Shop Planner
<ol style="list-style-type: none"> 1. Developed "Sales Ests." 2. Prepared broad descriptions of work to be performed (in form of Job Orders). 3. Determined material requirements in advance and either reserved or ordered for jobs. 4. Issued "will cost" estimates on Job Orders. 5. Assigned Job Order Numbers. 6. Attends arrival conferences. 	<ol style="list-style-type: none"> 1. Working from Job Orders developed chronological job breakdown (job analysis on Process Card). 2. Assigned Work Operation Numbers. 3. Assigned "should cost" m/h. allowance. 4. Prepared inter-shop requests for assistance to other shops and/or trades. 5. Assigned work by section of shop. 6. Maintained section and shop workload data. 7. Maintained files on work in process. 8. Ordered and expedited material. 9. Dispatches work. 10. Provided information on progress of work. 11. Processes Del. Rep'ts. 	<ol style="list-style-type: none"> 1. Develops "Sales Ests." 2. Prepares more detailed job orders consisting of chronological job breakdown, by work operation. 3. Assigns "should cost" std. m/h. allowances to all operations on job orders. 4. Orders all material except Shop Stores. 5. Assigns all accounting numbers (J.O. & L.I.). 6. Plans all major assist work on job orders. 7. Issues Job Orders for minor assist work. 8. Attends arrival conferences. 	<ol style="list-style-type: none"> 1. Receives and dispatches all Job Orders and Plans to supervisory force. 2. Notifies P&E of overights on materials. 3. Stages and routes material to work sites if S.O.P. 4. Provides information on progress of work. 5. Processes Del. Rep'ts.

Methods And Standards Work

Before (1954-1959) After (1959-1960)

Standards Branch (309)	Shop Anal. and Scheduler	Methods and Standards Br. (38)	Shop Planner
<ol style="list-style-type: none"> 1. Developed procedures, methods forms required, and furnished guidance and assistance in the administration of the Prod. Dept. PPAEP. 2. Determined and initiated action to secure suitable information required from other departments. 3. Reviewed Shop Planning Office records and assisted in the development of standard estimating data for individual shops. 4. Consolidated individual shop standards into overall job standards for use by PEG. 	<ol style="list-style-type: none"> 1. Developed standard estimating data under the guidance of the Standards Branch. 2. Conducted Work Sampling Studies as assigned. 3. Conducted Methods Improvement Studies as assigned. 	<ol style="list-style-type: none"> 1. Develops new production processes, methods, practices, and procedures. 2. Develops improved methods and engineers standard man-hour allowances for repetitive work. 3. Conducts Work Sampling Studies to determine areas for improvement. 	<p>No responsibility in this area.</p>

[illegible]

P&E. old worksheet

app 3 B

01 LEVEL (UPPER OK)

A/562

RAN AS-11-114-1744789 New 1111

To 30-658-1101-

REMOVE EXIST DND STRD 113 1/2 TO 12' FWD 116	11/2	26/1	71/4	72/1/2	max		
MODIFY T ³ % FR 111-112-113	11/9	26/10	63/1	71/4	72/4/2	50	
PATCH DND 109 ³ f REM DND	11/3	26/2				20	
FAB f WITH NEW DND 113 1/5.	11/6	26/5	36 1/4 BUT NOT	72 1/4	72 1/4	115	
FAB f WITH NEW DND 113 1/2 TO 12' FWD OF 116 P	11/5	26/4	71/4	72/4		42	
" " " " 116 TO 118 1/2	11/8	26/7	71/4	72/4		60	
" " " " 115 3/4	11/10	26/9	71/2	72/4		200	
" " " " NEW TRUNK. 118 1/2 TO 120 1/2	11/15	26/10	71/1	72/2		150	
TOTAL	11/64	26/48	61/4	63/2	71/5	72/8	637

Dupl. of new fixing

11 36

26 25

72 4

11 4

44 159

100 10

25 4

41 4

6 4

117 4

15 1

117 1

10 1

5 A

4 1

250

250

250

11 36

26 25

72 4

11 4

44 159

100 10

25 4

41 4

6 4

117 4

15 1

117 1

10 1

5 A

4 1

20

101 P 02

1

6/25/60

84

14

12

1

12

1

1

1

1

1

1

1

1

1

Dupl. of S.W.O.I.C.

J.O. 1101 PTOZ

USS ORION

15.18 30-794-1101

6/23/60
2304
02 ENDS / CAPTION 11-5-4
A. - MS 11-5-4
B. - 12 1794 11-5-4
C. - J.W.O.I.C.

A.T. & N.T. ENDS - UPPER DK - FRS. 104-121

1.12

10	2	5.2" 1/2 115B.
11	2	
12	1	
13	1	
9	66	
4	1	
5	1	
18	1	
19	1	
22	13	
23	1	
24	1	
25	1	
26	1	
29	1	
31	1	
32	1	
17	2	
34	8	
2	2	11.5" 1/2 115B.
35	1	11.5" 1/2 115B.
38	4	11.5" 1/2 115B.
39	4	12.75" 1/2 115B.
3	12	76.5" 1/2 115B.
16	2	17.5" 1/2 F.B. 115B.
7	7	
6	1	
20	3	
21	1	
28	1	

1.2 Δ

Δ

Δ

Δ

Δ

Δ

1.1 Δ

11.5" 1/2

11.5" 1/2

11.5" 1/2

1.9 Δ

11.5" 1/2

11.5" 1/2

11.5" 1/2

Dupl. of Swiss

6/15/60
230A

USS ORION AS-18 20-794-1101 02 BINS/GAYMA 1. B.D.G.
See SHEET # 1

A.T. & H.T. BINS - UPPER DEK, FRG. 109-121

2 of 2

30	1	6" x 3/8" F.B., MSB
40	1	- Dc -
36	3	4" x 3/8" F.B., MSB
1	2	6" x 4" x 8 25" T, MSB
1A	2	
37	1	
37A	3	
37B	2	
14A	1	3" x 1 1/4" x 22" T, MSB
14B	2	
14C	1	
14D	2	
14E	2	
14F	2	
14G	2	
14H	2	
5B	1	
5C	1	
8C	1	
33A	1	
33B	1	
33C	1	
8D	1	
8E	1	
27A	1	
27B	1	
33D	1	
33E	1	

11-5-11
11-5-11
4-10 11-5-11
4-8
11-5-11
11-5-11
4-7

2.2.1
2 21015/G17101 1.E,2,6
1 - 218P 215T
- 12 1744 1.7 -
C - 2 11.0 1.2

J.T. & N.T. BIDS - UNDER DR - Ins 109-121

100-554

$$(10)^2 - 11^2 - 12^2 - 13^2 - 14^2 - 15^2 - 16^2 - 17^2 - 18^2 - 19^2 = 100 - 121 - 144 - 169 - 196 - 225 - 256 - 289 - 324 - 361 =$$
$$33: 16^2 - 7^6 - 7^{30} \text{ HK } \triangleleft 16 \quad \therefore 16^2 - 7^6 - 7^{30}$$

٥٦٧

4) $E' - A' - C' - B' \quad / - A' - B' \quad \text{и} \quad \triangle A'$

1-2-4-4

① 171-1531-550-7'-10'-21' 1x11' Δ

(5) 24:00 2'-1"-20' 1K 12-

• • • •

(5) $22 \cdot 271 \cdot 273 = 2^4 \cdot 25 \cdot 11 \cdot 25 \cdot 3 = 29'$

[illegible]

11. 2. 11

AS-18 J.O. 1101 P.T. 02

Sg. fl -

$$\begin{array}{r}
 100. \\
 60 \\
 32 \\
 258 \\
 40 \\
 \hline
 340 \\
 2 \overline{) 727} \text{ HRS} \\
 \underline{363}
 \end{array}$$

11/A - $(36 \times .70 = 25 \text{ HRS})$ 11/B - $4/5 (31 \text{ hrs})$ M (8 HRS) 26/B - Burn - 12 HRS

11/D - S/F (89) S/C (18)

26/B - Serv. (45) Prod. $(\frac{25}{60} \frac{70}{85})$ 59.50 HRS

11/8 butt 31/16 full: 11

52 320 50 } 587

6 32

15 65

14 40

10 40

11/G ¹⁰⁷ - F/L - 97, S/C - 20

26/A - Serv. (45) Prod. $(\frac{13}{19} \frac{37}{69})$ 48 HRS

11/8 butt 31/16 full: 11

124 40

140 40

140 40

65 35

344

72/s - Provide crane service -

71/s - Provide crane service -

$$\begin{array}{r}
 400 \\
 1500 \\
 \hline
 1900
 \end{array}
 \left. \begin{array}{l} \\ \\ \end{array} \right\} 2000 \text{ sq. ft.}$$

$$\begin{array}{r}
 56 \text{ hrs} \\
 .70 \\
 \hline
 39.2 \text{ hrs}
 \end{array}$$

MEMORANDUM from L. V. Meloy, General Counsel, CSC, dated May 19, 1959

SUBJECT: Transfer of Functions and the Disestablishment of the Naval Overhaul and Repair Facility at Corpus Christi, Texas.

This office has examined the problem brought about by the disestablishment of the Corpus Christi Naval Overhaul and Repair Facility and offers the following advice and opinion for use in determining the appeals pending on that action.

* * * * *

In our opinion in order to properly adjudicate the cases involving transfer of functions, it is essential to understand what is meant by the word "function" in section 12 of the Veterans' Preference Act. We believe that this word refers to the overall mission or task performed by an agency. (Note that in this regard the term "agency" includes sections, branches, etc. within an employing entity as well as separate employing entities.) We do not believe that the word "function" refers to the many individual duties or items of performance on the job which when considered in the conglomerate determine the overall mission or task of the agency as referred to above.

In the Corpus Christi situation the Navy Department has submitted that the "function" of each of the nine Overhaul and Repair Facilities is the same. This mission or task or "function" is described by the Navy Department as the overhaul, overhaul conversion, progressive maintenance, modernization, conversion, modernization-conversion, interim-rework, modification and repair of aircraft, guided missiles, target drones, engines, accessories and components, including disassembly, cleaning, examination, repair, modernization, test, inspection, assembly, preservation and packaging. This "function" is, according to the Department, now being performed at nine separate Overhaul and Repair Facilities including the one at Corpus Christi. The Navy Department further states that when the Facility at Corpus Christi is fully disestablished, the identical "function" will continue to be performed at the remaining eight Facilities. While the workload of some of these eight continuing Facilities

will be increased because of the disestablishment at Corpus Christi, none of these Facilities will take on a new "function" according to the Department's submissions. The Department concedes that it is true that in some instances the continuing Facilities will take on new and different types of work such as the repair of the type P2V Aircraft which have been repaired only at Corpus Christi.

However, if the Department's description of the Overhaul and Repair "function" is correct such an item of work is not in itself a "function," but is merely a job included within the overall function of the Overhaul and Repair Facilities.

To clarify this matter, one should recognize that an Aircraft Mechanic is employed to repair any type of aircraft, drones, missiles, etc., assigned to him. He is not employed solely to repair P2V Aircraft at Corpus Christi although that may have been his particular assignment for some time. Indeed, in time the P2V Aircraft will become obsolete regardless of where it is being repaired but the Mechanic who has been repairing that type will continue in the "function" of the Facility by being assigned to work on another model or a different mechanism. His "function", and the "function" of his employing Facility, is the repair of aircraft, missiles, etc. It is not the repair of the particular item or job that he happens to be working on at the moment.

* * * * *

As indicated hereinbefore, we recognized that an agency may have a single "function" that is performed at several different locations. The elimination of one of the performance locations would not constitute a transfer of functions. This is so because the "function" being performed at the eliminated location is not being transferred. That "function" already exists at the locations which are not being eliminated. These non-eliminated locations are not gaining any "function" they did not already have. At the most, all that any one of them can gain is an increase in workload or the acquisition of a different type of work within the established "function". As stated earlier herein, we do not consider workload or items of duty as the "functions" referred to in section 12 of the Act.

Additional examples may clarify our opinion on this matter. As explained earlier it is essential in considering one of these cases to first recognize the agency's "function." In many instances an agency's "function" is determined by the assignment of its mission or task in a given geographical area. In such an instance the assignment performed within the given geographical area constitutes the "function" of the performing organization. To illustrate, the Civil Service Commission operates in the field by regional office assignments. The "function" of each regional office is the performance of the civil-service task for a given geographical area. If a consolidation of two regions occurred, there would be a transfer of functions from the abolished region to the continuing region. The reason for this is that the continuing region is acquiring a "function" that it never had, that is, the civil-service task for the geographical area that had been under the authority of the abolished region.

It is important to contrast the geographical-area situation with the overall-function situation such as the Navy Department alleges to exist with its Overhaul and Repair Facilities. In the instance in which there is a true overall-function situation, the agency's "function" is performed at several different points but without geographical limitation on the performance of the "function" at any particular point. In such a situation, if a consolidation occurs so that the overall "function" will be performed at a fewer number of points, there is no transfer of function. The reason for this is that no one of the remaining points is acquiring a "function" that it never had.

Another example of transfer of function occurs when the entire "function" is discontinued at one agency and initiated in a different agency. An instance of this type occurred when the War Assets Administration was abolished, and its "function" of disposing of surplus Government property was transferred to the General Services Administration.

A transfer of function also occurs when a "function" is transferred from one geographical location to a different geographical location even

though the transfer does not involve the transfer of the "function" from one agency to another agency. For example, suppose the Office of the Quartermaster General is moved from the Pentagon to quarters in Philadelphia. There is a transfer of function although the Office of the Quartermaster General at all times remains a part of the Department of the Army.

A transfer of function also exists when there is a change in the management authority of a "function". To illustrate, the "function" performed by the Childrens Bureau is removed from the management authority of the Social Security Administration and placed under the authority of the Public Health Service. This type of movement may involve no change in the geographical location of the Bureau, and at no time does the Bureau transfer out of the Department of Health, Education, and Welfare. It is, nevertheless, a transfer of functions.

As a broad generalization it can be said that a transfer of function occurs when the function (that is, the overall mission or task as defined hereinbefore) is eliminated at one point and added at a different point. There is no transfer of function when there is merely a consolidation so that a function that has been performed at more than one point is now performed at fewer points. To generalize further, it can be said that there exists a clear distinction between a transfer of function and a reduction in force. When there is nothing more than a reduction in the number of personnel performing a single function, the action is a reduction in force. When there is a movement of the function from one location or authority to another (either with or without a reduction in the number of personnel) the action is a transfer of function.

* * * * *

I, Mary V. Wenzel, Executive Assistant to the Commissioners, United States Civil Service Commission, state that I am the custodian of the records of the Civil Service Commission; that the attached documents are copies of Departmental Circular No. 740 and Supplements thereto which the Commission has published and circulated for informational purposes to all Departments and independent establishments of the United States Government.

Mary V. Wenzel
Executive Assistant
To the Commissioners

Washington, D. C.
November 22, 1961

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON 25, D. C.

January 12, 1954

DEPARTMENTAL CIRCULAR NO. 740

TO HEADS OF DEPARTMENTS AND INDEPENDENT ESTABLISHMENTS

SUBJECT: Application of Retention Preference Regulations to a
Transfer of Functions.

A. Application of Section 20.8 (a) of the Regulations

In connection with a recent action, the Commission thoroughly considered the intent of that provision of Section 12 of the Veterans' Preference Act of 1944, as amended, relating to transfers of functions. Heretofore, this provision of law and the Civil Service Regulations implementing it have been held to apply only to transfers of functions between Federal Departments or Independent Agencies. The Commission has ruled that Section 12 of the Veterans' Preference Act and thus Section 20.8 (a) of the Civil Service Regulations also apply to transfers of functions within a Federal Department or Independent Agency. The Commission also ruled that the provisions of Section 20.8 (b) do not apply when there is

a transfer of functions from one organizational unit to another and the first unit is abolished.

This action of the Commission defines "agency", as used in the third proviso of Section 12 of the Veterans' Preference Act and in Section 20.8 (a) of the Civil Service Regulations. An "agency", in this context, could be an entire independent establishment, a bureau, branch, division, section, or smaller organizational entity. The applicability of Section 20.8 (a) depends upon a judgment as to whether, in conjunction with a reduction in force, a function or functions of one organizational entity can be identified as having been transferred to another organizational entity. If such is found to be the case, then the incumbent or incumbents of positions engaged in the transferred functions must be given the opportunity to follow the functions prior to any reduction-in-force action which might otherwise affect them.

B. Rights of Employees

In view of the fact that Section 20.8 (a) will not be applied to many situations which were not formerly subject to these procedures, it is necessary to review the rights of employees who may be affected by transfers of functions. The Retention Preference Regulations provide that employees in positions identified with transferred functions shall be transferred before any reduction-in-force is made in connection with the transfer of functions. Some general principles which must be observed are as follows:

(1) Section 20.8 (a) applies to employees serving under other than temporary appointments; i.e., employees in retention groups I, II, and III.

(2) Employees who decline offers to move with their functions may be separated for this reason under Part 9 or Part 22 of the Commission's Regulations. Since such employees were separated for failure to accept an offer made in the interest of the government and were not affected by a reduction in force, the rights to reassignment, retreat, and entry on a reemployment priority list, which accrue because of a reduction in force, are not available

to them. However, if the transfer offers involve a movement to a different commuting area, career employees who are separated for failure to accompany their functions may apply to the Commission for entry on registers of eligibles and the Commission will give them priority certification to fill positions for which the registers are appropriate.

(3) Employees who accept offers to move with their functions are construed to be employees of the receiving organizational entity for purposes of the subsequent reduction in force. Career employees separated by reduction in force are placed on the reemployment priority list and receive full benefits under the Commission's Separated Career Employee Program.

(4) Where the transfer of functions involves a movement to a different commuting area, employees who elect to follow their functions need not be physically moved to the new commuting area prior to the reduction in force. Likewise, it is not necessary to effect personnel actions moving employees to the new organizational entity prior to the reduction in force. Employees adversely affected by the reduction in force have reassignment and retreat rights as employees of the receiving organizational entity in the new commuting area. Career employees who are separated in the reduction in force are placed on the reemployment priority list in the new commuting area. Such employees receive full benefits of the Commission's Separated Career Employee Program. However, since the employees were never physically located in the new commuting area, the benefits of the Separated Career Employee Program will accrue in the commuting area from which the function was transferred. Such benefits will include the displacement of indefinite employees in the agency from which separated in the commuting area from which the function was transferred.

The rights of the employees involved can be illustrated as follows:

EXAMPLE A: All the functions of Section X in Division Y in a Federal

Department are being transferred to Division Z in the same Department. Division Y and Division Z are both in the same commuting area. Section X is composed of 100 employees, but after the transfer of functions there will be fifty surplus positions in Division Z.

Step 1 -- Any employees in Section X who will otherwise be involuntarily separated or demoted must be offered the opportunity to follow the functions. Employees who do not accept may be separated under Part 9 or Part 22 of the Commission's Regulations.

Step 2 -- A reduction in force situation exists in Division Z and the Retention Preference Regulations relating to reduction in force must be applied. Employees reached for separation or demotion have reassignment and retreat rights as employees of Division Z. Separated career employees are placed on the reemployment priority list and receive full benefits of the program for separated career employees (displacement, priority referral, and priority certification).

EXAMPLE B: All factors are the same as in Example A except that Division Y and Division Z are in different commuting areas.

Steps 1 and 2 -- Actions and consequences are the same as under Example A, except as follows. Career employees who are separated for failure to transfer to the new commuting area may apply to the Commission for entry on appropriate registers of eligibles and will receive priority certification from registers on which their names are entered. The necessary reduction in force in the new commuting area may be accomplished prior to the physical movement of employees to the new commuting area. Employees adversely affected by the reduction in force have reassignment and retreat rights as employees of Division Z in the new commuting area. Career employees who are separated in the reduction in force are placed on the reemployment priority list in the new commuting area as employees of Division Z; however, they will receive benefits under the program for separated career employees

within the commuting area of Division X, since they were never physically employed in the area of Division Z.

C. Effective Date

Agencies shall give immediate effect to these instructions. They will be incorporated into the Federal Personnel Manual as soon as possible. The Commission will apply the foregoing policies in its determinations on appeals resulting from notices to employees issued on and after November 2, 1953.

D. Inquiries

Inquiries regarding this Circular may be made to the Bureau of Departmental Operations in the departmental service, Code 171, Extension 8808, and to the appropriate regional office of the Commission in the field service.

/s/ John W. Macy, Jr.
Executive Director

**UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON 25, D. C.**

September 27, 1954
PRI: JBC: bmg

DEPARTMENTAL CIRCULAR NO. 740, Supplement No. 1

TO HEADS OF DEPARTMENTS AND INDEPENDENT ESTABLISHMENTS

SUBJECT: Application of Retention Preference Regulations to a Transfer of Functions.

A. Management Option as to Methods of Separating Employees Who do not Accompany Activity.

1. Departmental Circular No. 740 reviewed the minimum considerations which employees must receive when an agency reduces its force in connection with a transfer of functions, and reviewed the rights of such employees in the transferred function. Under such circumstances employees in the transferred function must have an opportunity to follow the function prior to any reduction-in-force action which might otherwise affect them.

2. The circular provided that employees who do not accept offers to transfer with their function could be separated for this cause under Parts 9 or 22 of the Civil Service Regulations. Some agencies have suggested that the Commission require that employees who do not accept offers to transfer with their function, and who cannot be placed in vacancies in other functions, be separated under Parts 9 or 22 of the Regulations. The Commission has carefully considered this suggestion and has determined that to so require would not be in the best interests of agency management, the career system, or the Federal Government as a whole.

3. We clearly recognize management's prerogative to reassign employees from one position to another and from one place of employment to another. We also recognize that failure by an employee to respond to such management decisions is cause for discharge of the employee. Some transfers of functions involve employees whose services are necessary to the continuity and efficiency of the function during and after its transfer. Under such circumstances, employees have a clear obligation to follow the function. Failure to acknowledge this obligation is acceptable cause for discharge.

4. On the other hand, an agency may determine that the movement of employees is not essential to the continuity and efficiency of the transferred function, in which event the agency may prefer to separate employees under Part 22 of the Regulations as part of the concurrent reduction in force. Separation through reduction in force under such circumstances, may be considered preferable for several reasons, e.g., (1) to give career workers opportunities to realize their expectations for continued Federal employment, (2) to give agencies the opportunity to retain the employees in other functions through reduction-in-force reassignments, and (3) to enable the Federal government to retain the skills of trained workers and to foster the concept of a government-wide career service.

5. For these reasons the Commission has determined that agency management should continue to have optional methods for separating employees who do not accept offers to transfer with their function in a

reduction in force. Depending upon individual circumstances such separations may be made for cause under Parts 9 or 22 of the Regulations, or through reduction in force under Part 20 of the Regulations.

6. Regardless of the method selected, however, employees must have an opportunity to accompany the function. Even though a decision is made to forego the use of Parts 9 and 22 of the Regulations, employees must be considered for continuing positions in the transferred function to the extent that such positions are at levels higher than would otherwise be available.

7. Where the transfer of functions does not involve a reduction in force, however, separations may not be made under authority of Part 20 of the Regulations.

B. Advice to Indefinite Employees of Likelihood of Displacement in New Locations.

Where any transfer of functions will involve the movement of indefinite employees from one commuting area to another, it is advisable for the agency to determine in advance, insofar as possible, the likelihood that the indefinite employees may be subject to displacement by separated career employees in the new location. Information of this kind should be given to the employee to help him decide whether to accept employment in a different commuting area. The office of the Commission with jurisdiction in the new location will be pleased to furnish this information to agencies upon request.

C. Change in the Separated Career Employee Program.

A forthcoming revision of Chapter X-4 of the Federal Personnel Manual, will effect a change in the Commission's program for assisting separated career employees. Agencies will be required to report whether the separated career employee has declined an offer of a position at or above his priority referral level. The Commission will not give priority referral benefits to persons who have declined such offers. Persons who decline offers of positions in other commuting areas at or above their priority referral levels, and are thereby denied priority referral benefits of the SCE Program, will continue to receive priority certification from

registers to which their names are entered under the program.

/s/ John W. Macy, Jr.
Executive Director

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON 25, D. C.

June 23, 1960
* * *

DEPARTMENTAL CIRCULAR NO. 740, Supplement No. 2
TO HEADS OF DEPARTMENTS AND INDEPENDENT ESTABLISHMENTS
SUBJECT: Application of Retention Preference Regulations to a Transfer
of Function.

INTRODUCTION

The Commission has reviewed the problems agencies have had in handling transfers of function and has had the advice of the Inter-Agency Advisory Group on how the instructions on this subject could be improved.

As a result, the Commission has approved new definitions of "Function" and "Transfer of Function" set forth in this Circular. It has also approved new guides for determining which employees are identified with transferring functions.

Other possible changes in regulations and instructions have also been under consideration. However, in view of a pending case in the courts on this matter, no changes in the regulations themselves will be made for the time being.

DEFINITIONS

The following is designed to assist agencies in determining when the regulations relating to transfers of function apply.

There are two terms which are important, one of which is contained within the second. These are "FUNCTION" and "TRANSFER OF FUNCTION" and are defined as follows:

"FUNCTION" -- A clearly identifiable part of an agency's mission,

regardless of the manner in which it is performed, and all the integral parts of the mission.

"TRANSFER OF FUNCTION" -- The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, or the movement of the competitive area in which the function is performed to another commuting area.

The following discussion and examples are designed to help point up the meaning of the significant elements in the definitions. There are many factors, however, which should be taken into consideration before deciding whether a particular set of circumstances involves a transfer of functions. The discussion should therefore be viewed primarily as a guide rather than as a set of hard and fast rules.

A. Function

1. Clearly identifiable part of an agency's mission

The main point of this phrase is that a mission or clearly identifiable part of a mission may be distinguished from an individual job or task. For example, an identifiable part of an agency's mission might be the overhaul and maintenance of jet type aircraft. However, the job of one of a number of aircraft mechanics engaged on that function would not in itself be considered a function.

2. All the integral parts of the mission

It is important not to consider mission as relating to the overall mission or missions of the agency. Any activity carried on by an agency which can be identified as a recognizable segment of its overall area of responsibility may be a function. For example, administrative services such as procurement, storage, issue of supplies, budgetary planning, personnel management, etc., can be identified as functions which are integral parts of an agency's mission.

3. Regardless of the manner in which it is performed

If the manner in which a function is performed changes this does not mean that it becomes a different function. For example, a function

such as paying certain Federal beneficiaries may be performed manually. If the procedure for paying these benefits is mechanized it is still the same function.

B. Transfer of Function

1. Transfer of a continuing function

This refers to a function which reappears in identifiable form at a new location despite its disappearance or discontinuance at its old location. In contrast, a discontinued function that does not reappear at a new location is considered to be abolished. For example, when the U.S. Cavalry was mechanized, the function of procuring animal remounts was discontinued at Remount Stations and was abolished, with the result that Remount Stations were closed. Automotive vehicle procurement to supply the mechanized U.S. Cavalry was a new and different function.

Note: This does not refer to the transfer of a function purely for purpose of liquidation.

2. Transfer . . . from one competitive area and its addition to one or more other competitive areas.

There are two important elements in this phrase:

a. Competitive area

The significance of the term "competitive area" is that movements of activities or assignments entirely within a competitive area established under the Retention Preference Regulations are not considered to be transfers of functions within the meaning of the regulations. Such shifts are reorganizations within the competitive area and if any employees are to be separated or demoted as a result of the shifts the reduction in force procedures must be applied. However, reorganizations which involve shifts of functions out of a competitive area to another competitive area are transfers of functions. This applies even if part of a competitive area which is entirely within a given commuting area is moved geographically to a different commuting area where no similar activity has been located before. For example, if a records and filing function which had been located in Washington were shifted to Philadelphia and set up

there as a new office, the new office would become a new competitive area and the shift would be a transfer of function.

b. Transfer from and addition to

The importance of this part of the phrase is that the operation of the function must cease in one competitive area and be carried on in another competitive area. If two different offices are performing identical functions and one has a decrease in workload calling for a reduction in force while the second in a different geographic location has an increase in workload calling for new hiring, there is no transfer of functions. However, if the second office has taken over an activity which it did not have before and which was formerly performed in the first office, then a transfer of function occurs. An important factor to be determined in cases of this type is whether the functions in the different locations involved are really identical. Some examples may help to underline this point:

-- Office A has responsibility for handling claims from three States while Office B handles the same kinds of claims for three different States. If Office A is abolished and Office B takes over responsibility for all 6 States there has been a transfer of functions. The function of A was not handling claims generally, but handling claims for 3 States. When Office B took over this additional function, a transfer of function occurred.

--Office A handles claims for all persons throughout the U.S. whose last names start with letters A through M while Office B handles claims for persons whose last names start with N through Z. If Office A is abolished and Office B takes over all claims there is a transfer of functions.

--Shops A and B both store and repair the same class of equipment without geographical or jurisdictional assignment of orders. If the agency decides to abolish Shop A there would be no transfer of functions to Shop B even though Shop B receives some additional workload after A is abolished.

3. Movement of a competitive area to another commuting area

This part of the definition covers the shift of an entire competitive area to a different geographic location outside the initial commuting area. For example, if the headquarters office of an agency is relocated from Washington to Denver this would be a transfer of function. However, if an organization which is an entire competitive area simply shifts from one building to another within the same commuting area there is no transfer of function.

The Commission appreciates that these examples will not give a ready answer to all the varied kinds of situations that may occur in the Federal service. Many factors must be considered and a combination of elements rather than one clear-cut issue may determine the final answer. The agency's objective is always important in deciding whether a transfer of function occurs.

GUIDES FOR IDENTIFYING EMPLOYEES WITH FUNCTIONS

It is important to be able to determine which employees are identified with a transferring function because this determines their rights and obligations. The following guides are intended to assist agencies in doing this when a transfer of function occurs.

However, regardless of these guides, a transfer of function does not suspend management's inherent authority to assign its workforce to meet its needs. Agencies may move employees without regard to the guides to different jobs and different duty stations where needed so long as their statutory and regulatory rights to be protected against improper adverse actions are not violated.

Basically there are two principal methods of identifying employees:

1. An employee is identified with a function if he spends all or a major part of his time on it. However, regardless of expenditure of major part of time, the employee is identified with a function on which he spends his grade-controlling duties.

EXAMPLE. An employee spends 90% of his time selecting and packing items for shipment and 10% preserving items

for long-term storage. The employee is identified for transfer with the selecting and packing activity -- not with the preserving activity.

EXAMPLE OF EXCEPTION Supervision of a payroll activity transfers. Therefore, the grade-controlling duties of the payroll supervisor transfer, leaving only journeyman duties. The payroll supervisor is identified for transfer although the grade-controlling duties take only 25% of his time.

These principles must be applied whenever it is possible to apply them.

2. There are some situations, however, where neither preponderance of duties nor grade-controlling duties will do this. For example:

(a) Fifty similar employees select and pack for shipment 50 different classes of supplies. All employees work equally on all classes so that no one employee spends either his grade-controlling duties or the major part of his time on any particular class. Ten classes of supplies transfer to another agency.

(b) Five employees perform several different functions of equal responsibility. None spends the major part of his time on any particular function or combination of functions. Some, but not all, of these functions transfer.

(c) A centralized function employs 50 similar employees to handle 50 classes of supplies. It decentralizes by transferring 10 classes to each of 5 other agencies. No employee spends either his grade-controlling duties or the major part of his time on any particular class or group of classes.

(d) A large supply depot employing 3,000 people is to be abolished after its functions are transferred to other depots. The transfer is being made in separate phases over a period of six years. Which employees are identified for transfer in which phases?

In these types of situations all the employees involved are in a sense identified with a transferring function, however, some other method than number 1 must be used to decide which employees go where and in what sequence.

Therefore, in the types of situations listed in (a) through (d), employees will be identified for transfer in the inverse order of their retention standing for RIF purposes.

Employees who are serving in competitive levels which will have a surplus of employees as a result of the transfer, may be given an opportunity to volunteer to transfer with the function in place of employees who would otherwise be required to go with the function because of their retention standing. If there are more volunteers than the number that must transfer, preference should be given to those employees with the highest retention standing.

However, no employee may be separated or demoted solely because he volunteers to move with a transferring function in place of an employee identified by his retention standing.

3. Identification of maintenance employees. Maintenance employees such as guards, firefighters, roads, grounds and buildings maintenance, are not identified for transfer with the function performed on the premises they maintain. However, if the maintenance function itself transfers; for example, if another agency takes over those premises, maintenance-type employees are identified for transfer with the maintenance function.

The size and complexity of the maintenance workforce is more closely related to the size and nature of the buildings and grounds they maintain than to the function performed therein. Further, some Federal properties are maintained by one agency for use by whatever other government agencies need quarters. In this case, the relationship between the tenant's function and the maintenance group is even less than when the agency performs its own maintenance.

4. Identification of administrative support employees. Administrative support employees such as comptroller, organization and methods, fiscal accounting and payroll clerks, personnel, are entitled to transfer when identified by step 1 above. Otherwise, any of these employees made surplus by the transfer are identified by step 2 above.

The size and complexity of the administrative support workforce is related to the workforce performing the function. Although not engaged directly on the function this group contributes to its performance by recruiting, training and paying those engaged directly on the function, by providing them with administrative, medical, managerial and similar services. This part of the workforce is directly affected by the transfer of a function to whose performance they contribute. For example, if an agency needs three payroll clerks before a transfer, but needs only two after the transfer, one clerk is surplus. If the surplus clerk is not identified by 1 above, one of the three clerks is identified for transfer under 2 above.

EFFECTIVE DATE

The definitions and guides in this circular are effective August 22, 1960 for actions taken because of transfer of function.

INQUIRIES

Questions from the field on these definitions and guidelines should be directed to the appropriate regional office. Questions from the metropolitan area of Washington, D. C., should be directed to the Appeals Examining Office, Bureau of Departmental Operations.

/s/ Warren B. Irons
Executive Director

PRODUCTION CONTROL SYSTEM

PROCEDURES MANUAL FOR U.S. NAVAL SHIPYARDS

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1 MARCH 1956



DEPARTMENT OF THE NAVY
BUREAU OF SHIPS

letter dated March 1956

**DEPARTMENT OF THE NAVY****BUREAU OF SHIPS
WASHINGTON 25, D. C.**

IN REPLY REFER TO

March 1956

This publication is a revision of the Bureau of Ships Publication "Production Planning and Control Program, Shop Planning Study", NAVSHIPS 250-740-3, issued under date of June 1951. The Production Control System Procedures Manual consists of four chapters and a Glossary of Terms; viz., Introduction, Advance Planning, Central Scheduling, and Shop Planning Operations.

This edition is printed in loose-leaf form, so as to provide for additions and deletions as issued. Subsequent to the completion of current Bureau of Ships studies, additional chapters will be issued covering mechanized Direct Labor Budget procedures, Job Cost Keeping, Standards, and Performance Measurement procedures and techniques.

It supersedes NAVSHIPS 250-740-3 of June 1951, and becomes effective immediately.

A handwritten signature in cursive script, reading "R. E. Garrels", is positioned above the printed name.

Captain R. E. Garrels, USN

Chapter I

INTRODUCTION

The Production Control System, as described in this Manual, has been developed by the Bureau of Ships around the findings of Cresap, McCormick, and Paget, Management Engineers, who surveyed the operations of Naval Shipyards in 1949. The primary purpose of the survey was to determine if performance measurement was feasible in production shops, and if refinements were desirable in the techniques, then in effect, for Budgetary Control, Organization and Methods Planning, and Production Planning. The report submitted by Cresap, McCormick, and Paget concluded that performance analysis in production shops was feasible and that valid standards of measurement could be established by taking the total jobs, as issued by the Planning Department, and breaking them down at the shop level into basic operations or work elements. These work elements could then be used to establish reasonably accurate measures or standards of performance and would also provide valid operating data for use in scheduling and controlling work. The report directed attention to the principal elements of shipyard organization which should be revised or strengthened in order to assure the success of a performance analysis program.

In the area of Production Planning, the report stated "that as a result of incomplete shop planning, all too frequently the burden of detailed job planning and scheduling devolves on the line supervisors who should be left free to concentrate on supervising the accomplishment of work in the most economical manner."

They also reported that central scheduling practices varied widely among the shipyards as to; (1) extent of scheduling for various classes of work; (2) time at which schedules were prepared; (3)

methods by which schedules were determined, and; (4) assignment of scheduling responsibilities.

The ultimate objective of the Production Planning and Control Program is to increase productivity by utilizing the latest production control techniques to correct the deficiencies outlined above, and, as a by-product of the system, furnish all levels of shipyard management with performance reports reflecting the degree of labor effectiveness. To achieve this objective and to assure an effective production control system, all planning work, design work, and procurement of materials must be subordinated to the actual direct work performed by the shops. It is this phase of shipyard operations which represents, by far, the largest percentage of labor expenditures and, therefore, offers the best opportunity for reducing the cost of doing work. The specific objectives of the Production Control System procedures as contained in this Manual are to:

1. Improve manpower utilization by reducing or eliminating standby time and other time lost because of delays resulting from various causes.
2. Provide accurate workload data and accurate information of the effect of current and anticipated work on each shop's capacity.
3. Improve the shipyard's ability to meet ship completion dates as scheduled.
4. Improve the coordination of shipyard work by establishing a common timetable for the various departments and shops.
5. Improve on-the-job supervision by providing for the work to be pre-planned

in detail by shop analysts and schedulers operating in a staff capacity to line supervision.

6. Provide management with the necessary controls and reports to gauge operational effectiveness and make decisions based on facts.

The procedures and techniques described have been trial tested by the Bureau of Ships in shipyards under actual operating conditions. The Shop Planning procedures were first published in the Shop Planning Study (NAVSHIPS 250-740-3). This publication contained the findings, conclusions, and recommendations of the Bureau of Ships team which made the original study of shop planning operations at the Norfolk Naval Shipyard from February to May 1951. In brief this group concluded that the only possible way to obtain the optimum degree of control considered necessary was to provide for

a more detailed breakdown of work at the shop level utilizing shop planners trained to analyze and determine the best job methods. These Shop Planning procedures, known as Phase One of the Production Planning and Control Program with certain modifications and refinements made by this publication, are considered applicable to the Production Department Shops in all U. S. Naval Shipyards.

Other production control procedures contained herein have been designed to integrate Shop Planning procedures (Phase One) and Advanced Planning, Central Scheduling and Work Coordinating procedures (Phase Two) into an effective Production Control System. These procedures, which were developed and trial tested at Charleston Naval Shipyard from September 1954 to February 1955, include procedures aimed at improving advance planning and a new system of central scheduling by key shops.

until such time as a Direct Labor Budget System is installed in the Production Analysis Division to provide direct labor controls at the Customer Order level. Controlled job orders with definite money limitations would necessarily be exempted from this restriction and should continue to be issued in accordance with present shipyard practice.

Work Specifications on Job Orders

Careful attention should be given to the amount of detail used to define work specifications on job orders. This is necessary to prevent duplication of effort by Planners and Estimators in the Planning Department and the Shop Analysts and Schedulers in the Shop Planning Sections of Production Shops. No hard and fast rule can be applied to determine if too little or too much detail is being issued. However, the following facts, conclusions, and recommendations are offered to serve as guidelines:

1. The Planning Department is responsible for authorizing "what" is to be done.
2. The Production Department is responsible for determining "how" the work will be done and "when." The "when" to be within broad dates assigned by higher authority.
3. Shop Planning Sections have been staffed with Shop Analysts and Schedulers who serve in a staff capacity to the Master Mechanic. They are responsible for breaking jobs down operationally for the purpose of developing standard operational estimating data, developing and standardizing best methods of doing the work, scheduling operationally, progressing the work, maintaining workload charts, determining assist and/or service trade requirements, and in general providing for better control over a shop's productive efforts.

4. Planners and Estimators define "scope of work" on each job order in order that misunderstandings between the Shops and Planning Department do not occur thus obviating the possibility of more or less work being done than was originally agreed to with the customer. "Scope of work" includes what is to be done, e.g., open-up, paint, repair, clean, inspect, relocate, install, test, operate, or machine specific pieces of equipment, machinery, ventilation, ships structure, systems, etc. in accordance with specifications.
5. Shop Planning Sections, when provided with a job order containing adequate information on "what is to be done," make a detailed operational breakdown of the job. The breakdown assigns responsibility to each section of the shop concerned with the various operations required to complete the job. The detailed breakdown made by the Shop Analysts provides the "how;" start and completion dates assigned for each operation provide the "when."
6. The Key Shop Concept of Scheduling (outlined in Chapter Three) requires the key shop, as indicated on the schedule, to break down their phase of the job and determine at that time any assist or service work required of other shops to help them complete the phase of the job for which they, as a key shop, are responsible. After determining their needs, insofar as what assist or service work is required, the key shop sends assist work requests to the assist or service shop specifying what is to be done, where it is to be done, when it is to be done, and who to contact in the key shop if additional details are required.

7. The Planning Department, to avoid duplication of the shop planning efforts in this area, should not attempt to detail assist or service work on the job orders. Assist and/or service work requirements must be included on the job order and included in the estimate. Use of statements such as: Provide burning and welding, provide chipping, provide rigging service, remove interference, is considered to be good practice at the Planning and Estimating Division level for assist and service work as the key shops will provide the detailed instructions to assisting shops.

In summary, if the job orders contain sufficient information to outline the scope of the work to the key shops (what is to be done), provide minimum instructions to the assist and service shops, and do not attempt to specify "how" the work will be done by individual sections of a shop the job orders will be compatible with Production Control System requirements.

Responsibility

Implementation of the Second Phase Production Planning and Control Program procedures concerning Advance Planning, Scheduling, and utilization of Phase One (improved shop planning procedures) data will not result in any basic organizational changes or shifts of responsibility from one group to another. Planning and estimating functions presently performed by

the Planning and Estimating Division includes the following major elements:

1. Authorization of work;
2. Development of over-all estimated cost figures to form a basis for requests for funds;
3. Preparation of work specifications outlining the scope of work to be performed by individual trades and shops;
4. Estimating man-day and material requirements by shop;
5. Initiation of procurement of material and determination of planned material requirements;
6. Accomplishment of advance planning;
7. Preparation of Master and group plans of operation for large overhauls, conversion, new construction and other projects.

Of the foregoing major elements, the accomplishment of advance planning has assumed prime importance. Increased emphasis must be placed on performance of this function by the Planning Department to ensure fulfillment of Planning's responsibility in achieving a smooth working Production Control System.

Chapter IV

SHOP PLANNING OPERATIONS

Background

Industrial progress, through its intensive development, has brought production planning and control into the position of major importance in Naval Shipyards. Of all the various elements which go to make up a good production planning and control system, shop planning is one of the most important.

Shop planning operations, as described herein, are based on the principle that planning is a staff function, a service to the line supervisor. The Shop Planning Section analyzes the jobs, determines the best method and the sequence of operations, estimates time required for each operation, establishes the date when the work is to be started and completed between the broad dates furnished by schedules from the Central Scheduling Branch Code 308, and procures the necessary plans, material, tools, equipment, and services. These functions allow the Leadingmen to concentrate their efforts on supervision and technical direction of work at the job level and the Quartermen to expend their efforts at the shop section level.

This division of duties, together with the positive placing of responsibility, eliminates gaps or overlaps of responsibility along the lines of supervision which have been laid down. The primary objective of a Shop Planning Section is to plan jobs in detail at the shop level and deliver to the Quartermen as nearly a complete "package" as possible. This responsibility must be recognized by all levels of management both naval and civilian. The responsibility which is placed in the Shop Planning Section for the execution of assigned functions must be accompanied by commensurate authority delegated by the Shop Master. This authority in no way infringes upon the authority which belongs to line supervisors and Ship Superintendents. Conversely, when the authority of the line supervisors and Ship Superintendents and the authority in the planning area of Shop Analysts and Schedulers are fully understood and coordinated, the result will be three groups working in close harmony. This should result in more efficient control of work and better utilization of manpower.

September 2, 1960

Mr. Donald M. Murtha
1009 Tower Building
Washington 5, D. C.

Dear Mr. Murtha:

There is transmitted herewith a copy of my findings and recommendation in the appeal described below:

Appeal of:	Augustine J. Boroody, Et Al
Action Appealed:	Reduction in Force
Employing Agency:	Department of the Navy
Reviewed Under:	Section 12 of the Veterans' Preference Act of 1944, as amended.
Decision:	Agency action sustained insofar as a ruling re transfer of functions is concerned.

Sincerely yours,

S. L. Elliott
Chief, Appeals Examining Office

* * *

UNITED STATES CIVIL SERVICE COMMISSION
APPEALS EXAMINING OFFICE
WASHINGTON 25, D. C.

September 2, 1960

APPEAL OF AUGUSTINE J. BOROODY, ET AL
UNDER SECTION 12 OF THE VETERANS' PREFERENCE ACT OF 1944,
AS AMENDED

INTRODUCTION

The Department of the Navy, Bureau of Ships, has reorganized its procedures for planning work in Naval Shipyards. As a result, the rating or position of Shop Analyst and Scheduler has been abolished. A reduction in force has been effected in the competitive levels of these Shop Analyst and Scheduler positions throughout the Navy's shipyards. Appeals of these reduction-in-force actions have been filed in the regional offices

of the Commission having geographic jurisdiction. Mr. Donald Murtha, Attorney for the Naval Shop Analysts and Schedulers Association and Mr. Neal Ellis, Attorney for the Department of the Navy, entered into a stipulation to process a representative group of appeals before this office for the purpose of obtaining a decision upon contentions of the appellants common to all appellants throughout the United States, i.e., whether a transfer of function has occurred to the Planning Division of the yards. It was further stipulated between the parties that the Commission's final decision on the common contention would be dispositive of the questions in all the appeal cases filed by the Naval Shop Analysts and Schedulers represented by the Association's Attorney in the various regional offices of the Commission. Pursuant to the stipulation, a hearing was held August 3, 1960 in the Appeals Examining Office, Washington, D.C.

ANALYSIS AND FINDINGS

It appears from the record before this office that there are variations in the factual situations of individual cases that might be the subject of agency grievance appeals, pay claims, or adjudication under the reduction-in-force regulations per se.

Also it appears from the record that there are variations in the progress of the reorganization among the shipyards of the Navy.

However, according to the stipulation, any question of law or equity peculiar to one appellant is not encompassed in this decision. This decision encompasses only the question whether a transfer of function to the Planning Division of the yards occurred in the abolishment of the Shop Scheduler and Analyst positions within the meaning of Section 12 of the Veterans' Preference Act, the Commission's regulations, and Navy Department Regulations.

General. Pursuant to the reorganization plan, the Department of the Navy realigned duties in its naval shipyards having to do with the preparation of the planning and direction documents necessary to the accomplishment of ship repair and alteration. It decided that it no longer needed

the positions of Shop Analyst and Scheduler so it abolished these positions and held a reduction in force in the competitive level of Shop Analysts and Schedulers. As a general case those remaining in the level were adversely affected by the reduction in force.

The appellants' basic contention is that each of the incumbents of the positions of Shop Analysts and Schedulers should have been "transferred" from the Shops to the Planning Department for assignment to positions there before any reduction in force was held.

They contend that all or some of the tasks they performed are now performed in the Planning Department and contend that their transfer to positions in the Planning Department was required by the transfer of functions proviso of Section 12 of the Veterans' Preference Act; Section 20.8 of the Commission's Regulations; Civil Service Commission Departmental Circular 740 and Supplement (1) and Navy Civilian Personnel Instructions 170.9-4.

The Navy Department contends that its employees in the Planning Division were always engaged in the function of planning ship repair and alteration as were the Shop Analysts and Schedulers and all that has been done is to reassign duties within the function.

They point out that a competitive examination was held to give Shop Analysts and Schedulers and others an opportunity to compete for higher paid positions in the Planning Division; that Shop Analysts and Schedulers were promoted to these positions and that a reduction in force was conducted among those remaining Shop Analysts and Schedulers who could not be promoted or reassigned. They contend the personnel actions taken were entirely proper and lawful.

In greater detail, the factual situation appears as follows:

Between 1954 and 1959, the Navy Bureau of Ships, or some authority in the Naval Force Afloat, would authorize and advise a naval shipyard that a vessel or vessels would arrive there for alterations or repair. The Planning Department of the yard would receive the work request and prepare plans or design specifications for the work to be done, develop

estimates, and prepare a work booklet which contained a list of authorized work items to be done. Subsequently, job orders and material requisitions would be prepared.

This Planning Division was staffed with some professional employees and employees connected with trades and crafts. The ones of particular interest to this appeal are the positions of Planner and Estimator, the pay of which was determined by prevailing wage methods and which was evaluated at twenty-five percent above a base rate determined by formula.

(The Shop Analysts and Schedulers were paid at a rate of twenty percent above the base formula and the Shop Planners were paid at a rate of twelve percent above the base formula. The system operated so as to keep a constant percentile differential between Shop Planners, Shop Analysts and Schedulers, and Planners and Estimators of the same craft.)

Under the Production Control System, the incumbents of Planner and Estimator positions (the positions in which these appellants say their former duties can be found) among other things, would prepare a job order which states what was to be done e.g. open up, paint repair, clean inspect, relocate install, test, operate, or machine specific pieces of equipment, machinery, ventilation, ship structure systems, etc., in accordance with specifications.

Other duties performed by the Planners and Estimators consisted of making estimates and procuring of materials, and preparation of planning schedules. These job orders went from the Planning Division to the Shops. Shop Planning Sections were staffed with Shop Analysts and Schedulers whose duties were to serve as staff assistants to the Master Mechanic. They were responsible for taking the job orders and breaking the job down operationally for the purpose of developing standard operational estimating data, developing and standardizing the best method of doing the work, scheduling operationally, progressing the work, maintaining work load charts, determining assist and or service trade requirements and, in general, providing for better control over a shop's productive efforts.

At first glance at the above, it appears that some part of the duties of the Planners and Estimators was duplicative of those of the Shop Analysts and Schedulers.

The Production Control System Procedures Manual of the Bureau of Ships notes this and its preamble to the description of the procedures to be followed by Planners and Estimators and Shop Analysts and Schedulers relating to job orders was that care should be used to avoid duplication of effort. In general, the manual specifies that the Planners and Estimators define the scope of the work, i.e., what is to be done. The Shop Analysts and Schedulers, when provided with the what is to be done, break the job order down, assigning to each section of the shop concerned, the various operations to be done to complete the job and assign start and completion dates for each operation.

Looking at the work samples submitted by the appellants and the agency, the agency exhibits indicate a Planner and Estimator was notified that the USS Meredith was coming to a shipyard for regular overhaul. Among the things to be done were to replace a vegetable locker. The Planner and Estimator made out a job order. He wrote--remove and scrap corroded vegetable locker; fabricate and install new aluminum locker. He made reference to a Bureau of Ships Plan by number and stated that the locker was to be placed in the same location on the vessel. Then he identified the shops that were to do the work. He identified shop 17 as the accomplishing shop and designated shop 11 to provide chipping service, shop 26 to provide welding, shop 71 to paint, shop 72 to provide rigging. He also estimated the man-days each would use in accomplishing its task.

This job order then went to the Shop. The Analyst and Scheduler took the job order and made up a schedule for doing the work. He fitted his schedule into the master plan for work on the vessel and assigned start and completion dates to each of the shops identified by the Planner and Estimator. He wrote job instructions to various shops in more detail than did the Planner and Estimator and he also made an estimate of what the work should cost. It was explained by the agency that the Planners

and Estimator's estimate was an estimate of actual cost that gave consideration to the fact of delay and lost time.

The Shop Analyst and Scheduler's estimate was an estimate of what the work should cost if delays and lost time did not occur. Over-simplified, it appears the Planners and Estimator's estimate represented the estimated cost; the Analyst and Scheduler's estimate represented a goal.

From the sheet prepared by the Shop Analyst and Scheduler, a typist prepared work orders covering each item that went to the leadingman or supervisor concerned who directed the work.

The exhibits submitted by the appellants demonstrate the same work method as do the exhibits of the agency. However, the appellants' exhibits indicate the Planner and Estimator function was less detailed than the agency exhibits indicate.

Significantly, the Planners and Estimators are working in a Planning Division in one location in the yard in what might be called an office atmosphere and the Shop Analyst and Schedulers are working in the shops carrying on their day-to-day work contracts with the work supervisors there as staff assistants to the master mechanic in charge of the shop.

The Planners and Estimators and the Shop Analysts and Schedulers both perform duties other than the making of job orders or estimates.

What we have described so far is the general case. Individuals were permitted to specialize in one or two duties associated with their positions but these factors do not alter the general duty assignments in the Production Control System insofar as Planners and Estimators and Shop Analysts and Schedulers are concerned.

On November 17, 1959, Buship Instruction 4850.14 was issued. This order noted that an effort must be made to reduce costs in the Planning and Control Program. It noted that paperwork generated by the present Planning and Control Program appeared to be excessive.

It pointed out that there was considerable overlapping of effort

between the Planning and Estimating Division and Shop Planning.

It directed that more detailed specifications must emanate from Planning and Estimating, and Planner and Estimator job process cards should be used as a means of assigning work to the leadingmen.

After the issuance of this order, the reorganization, insofar as this case is concerned, began to take shape.

There was a position in the Planning Division that existed heretofore--that of Planner and Estimator. The incumbents of these positions now did all the work they did heretofore with the added duty of making detailed work orders to be used in assigning work to the leadingmen.

A position was authorized in the yards denominated as Shop Planner. The order stated that this rating should be used for the Shop Planning duties remaining in the shop after implementation of Order No. 4850.14, the one that directed the Planners and Estimators to prepare more detailed job orders to encompass the detailed orders formerly prepared by the Shop Analysts and Schedulers.

Thus, a fair conclusion of fact is that some of the duties formerly performed by Shop Analysts and Schedulers can be found assigned to Planner and Estimator positions.

Other duties formerly performed by Shop Analysts and Schedulers are now assigned to Shop Planner positions.

The result of the reorganization which is not completed at this time, appears to be an increase in Planner and Estimator positions, the establishment of Shop Planner positions and the abolishment of Shop Analysts and Scheduler positions.

For example, in the Philadelphia yard, it appears that before the reorganization there were approximately two hundred Shop Analysts and Schedulers and approximately one hundred Planners and Estimators. At the time of the hearing on this case, Philadelphia had approximately one hundred and fifty Planners and Estimators and eighty Shop Planners.

Thus, it appears that the reorganization has resulted so far in the elimination of seventy positions in the Planning area of the Philadelphia yard.

The appellants, through their attorney, contend that the fact that the Planners and Estimators now perform much of the detailed work that was formerly performed by Shop Analysts and Schedulers on job orders, requires that the Shop Analysts and Schedulers be transferred to the Planning Division under the transfer of functions provisions of Section 12 of the Veterans' Preference Act before any reduction in force could take place among Shop Analysts and Schedulers positions. By transferred, he means that the persons holding Planner and Estimator positions should be merged with the persons holding Shop Analyst and Scheduler positions and then a reduction in force could properly be held in this new competitive class.

Even if the contention of the attorney for the appellants is correct that some act of transfer was required, Section 20.8 of the Commission's regulations would require that the transfer of Shop Analysts and Schedulers be accomplished without change in tenure of appointment. In other words, they would have arrived in the Planning Division as Shop Analysts and Schedulers and in a reduction in force they would have no right to promotion to the positions of Planners and Estimators.

In short, the result would have been exactly the same as the present action if the Department of the Navy followed the method advocated by the attorney for the appellants; a reduction in force among Shop Analysts and Schedulers.

Nevertheless, appellants contend such a transfer and merger should have been made because a transfer of function occurred. Appellants' basic hypothesis is that a transfer of function occurred within the meaning of Section 12 of the Veterans' Preference Act, 20.8 of the Commission's regulations and Civil Service Commission Departmental Circular 740 when the detailed job order work was assigned to the Planning Division.

Neither the statute or regulations cited provide that a specific duty or task is a function per se. The word function is not defined in the law or the regulations and it seems to us that a function is more or something different from the duties or tasks that might be assigned to a particular position.

For example, a Junior Accountant might be assigned the duty of turning on the lights in the morning and opening the safe and office files. If these duties were assigned to a clerical employee, it would be producing an anomalous result to construe Section 12 of the Veterans' Preference Act to require the transfer of the Accountant to the clerical position before a reduction in force could be held.

In the instant case, we have a situation where the Planner and Estimator has been directed to make a more detailed job order than the one he made heretofore. This eliminates the necessity for the Shop Analyst and Scheduler to prepare the detailed job order.

Thus, we are brought to the question--was the preparation of this detailed job order the function of the Shop Analyst and Scheduler?

We think not. The Production Control Manual clearly describes the function of the Shop Analyst and Scheduler. He is, or was, the staff assistant to the Master Mechanic in the Shop.

It seems to us that if we were to find that such a function had been transferred we would have to find some person in the Planning Division who was now performing the function of staff assistant to the Master Mechanic. As we noted hereinbefore, the function of the staff assistant did not consist solely of preparing more detailed job orders.

Thus, we find no transfer of functions has occurred within the meaning of Section 12 of the Veterans' Preference Act, 20.8 of the Commission's Regulation or Departmental Circular 740, as it existed at the time of the action appealed.

We are now brought to the question whether the Department of the Navy's regulations as they existed at the time of these actions require a different result.

Navy Civilian Personnel Instructions 170.9-4 contains the Department of the Navy's regulations concerning transfer of functions.

Section 9-4(a) restates the Civil Service Commission's regulations--when functions are transferred, employees shall be transferred. What we said *supra* about functions v duties is also applicable here and on the

facts of this case NCPI 170.9-4 (a) does not require a ruling that functions have been transferred.

NCPI 170.9-4 (b) provides "The policy outlined in (1) through (4) below was established by the Department of Defense for the purpose of assuring equitable and uniform treatment of employees when functions to which they were assigned are transferred."

- 9-4b (1) Provides that when the work being performed by one service or naval activity is taken over by another service or activity, this will be construed as a transfer of functions.
- 9-4b (2) Provides that when the work of one service or naval activity is simply being cancelled and no corresponding function is being assumed by another service or naval activity, there is no transfer of functions.
- 9-4b (3) Provides that when a combination of transfer of some continuing functions and a cancellation of others occurs, the action to be taken in regard to employees depends on whether or not the function transferred is severable from the function cancelled. In cases when the function is not severable, the regulation provides that the entire action shall be handled as a transfer of function.
- 9-4b (4) Deals with real property transfers.

Again what we said about functions v duties applies here. There is nothing in Section 170.9-4 of the NCPI that would require a decision that any specific task or duty was a function per se.

Subsequent section of NCPI cited by appellants indicate that when a function is transferred, the transfer of the employee shall be made to the location of his highest paid duties but this section and others have no application unless it is first found that a function has been transferred.

As we found above, no transfer of function exists in this factual situation.

No further appeal from this decision will be entertained unless it is submitted to the Chairman, Board of Appeals and Review, U.S. Civil

Service Commission, Washington 25, D. C., within seven days after receipt of this decision. Notification of a further appeal should be given to this office so the case file can be transmitted promptly to the Board.

Since there is no further right to a hearing, additional representations (if any) should be made in writing and submitted in duplicate with the appeal to the Board.

/s/ S. L. Elliott, Chief
Appeals Examining Office

[Final Decision]

BAR:JAN:plb
Typing Date: November 17, 1960

Donald M. Murtha, Esq.
Attorney-at-Law
1009 Tower Building
Washington 5, D. C.

Dec. 7, 1960

Dear Mr. Murtha:

Reference is made to your appeal from the decision of the Appeals Examining Office in the representative case of Augustine J. Boroody, et al, which, by stipulation, was limited to the single issue of whether a transfer of function had occurred as the result of a reorganization in the Naval Shipyards whereby Shop Analyst and Scheduler positions were eliminated and the paramount duties and responsibilities of those positions were redistributed to the Planner and Estimator rating in the Planning Department. The Appeals Examining Office found that no transfer of function, within the meaning of the applicable law or regulations, had occurred.

Upon review of the appellate record, the Board of Appeals and Review submitted the case to the Commission for decision because of the issue presented therein and the evident impact that the ultimate decision would have on a sizeable number of Naval Shipyard personnel.

The entire appellate record has been reviewed including your representations in behalf of the Shop Analysts and Schedulers whom you

represent, and the submission of the Navy Department, a copy of which has been furnished to you.

You contend in the further appeal in behalf of the Naval Shop Analysts and Schedulers Association that the Appeals Examining Office, in its letter of decision, misconceived the facts in this case and misconceived the pertinent law that governs "transfer of function" as well.

As to the facts, the Commission finds from the evidence of record that the function, the identity of which is the prime issue in this appeal was, and still is, the maintenance of planning and production control in each Naval Shipyard. The Commission further finds that, whereas prior to the reorganization, the planning and production control function operated with the Planners and Estimators furnishing broad outlines of the repair and maintenance work to be performed at the Shipyards, with the Shop Analysts and Schedulers following through with more detailed instructions on the same work orders the function has, since the reorganization, been so rearranged that the preparation of the detailed instructions formerly supplied by the Shop Analysts and Schedulers has been assigned to Planners and Estimators. The evidence also discloses that the Planners and Estimators have, prior to and since the formal inception of the production control system, performed work the substance of which has been preliminary to and related to the work performed by the Shop Analysts and Schedulers, all of which work was and is identified with the planning and production control function in each Naval Shipyard. In reality the primary work of the Planners and Estimators and the primary work of the Shop Analysts and Schedulers were, prior to the reorganization, operating parts of a single function and not independent and separable functions. As a result of the reorganization the operating parts of the Shipyards' planning and production control system were streamlined to eliminate one of the parts that was found to be superfluous, i.e. the Shop Analyst and Scheduler rating. In view of the above findings of fact, The Commission agrees with and affirms the conclusion of the Appeals Examining Office that no transfer of function occurred in the various Shipyards as a result of the

reorganization so as to entitle the Shop Analysts and Schedulers to move into the Planning Departments where the Planner and Estimator positions were located before a reduction in force could ensue.

Since it is established by the facts that a transfer of function did not take place, a further discussion of the law, regulations, or procedures governing the rights of employees in a transfer of function is not essential to this case.

The Commission further finds that a reorganization occurred which necessitated abolishing the Shop Analyst and Scheduler positions and which required the application of reduction-in-force procedures to determine the rights of those holding such positions.

Accordingly your further appeal in behalf of Augustine J. Boroody, et al, is denied.

By direction of the Commission:

Sincerely yours,

Mary V. Wenzel
Executive Assistant
to the Commissioners

[Filed December 13, 1961]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH W. DICK, et al.,

Plaintiffs,

v.

ROBERT S. McNAMARA
Secretary of Defense, et al.,

Defendants.

Civil Action No. 732-61

MOTION FOR SUMMARY JUDGMENT

Defendants through their attorney, the United States Attorney for the District of Columbia, respectfully move this Court to grant summary judgment for them on the ground that the pleadings and the following

documents, which are attached hereto and incorporated herein:

Certified copy of the Civil Service Commission
record concerning plaintiffs,

Certified copy of Departmental Circular No. 740,
and supplements thereto, Civil Service Commission,

Certified copy of pertinent documents from the
Department of the Navy,

show that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law for reasons set forth in the memorandum of points and authorities in support of this motion.

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan, Principal
Assistant United States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

/s/ Ellen Lee Park
Assistant United States Attorney

[Certificate of Service

[Filed January 16, 1962]

MOTION FOR SUMMARY JUDGMENT

Plaintiffs respectfully move this court to grant summary judgment for them on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law for reasons set forth in the memorandum of points and authorities in support of this motion.

Plaintiffs rely for the purpose of this motion upon record of the Civil Service Commission made in plaintiff's case, Veterans Preference Act and the various regulations of the Civil Service Commission and the Department of the Navy pertaining hereto. These documents are attached to defendant's motion for summary judgment which plaintiffs oppose.

/s/ DONALD M. MURTHA
Attorney for Plaintiffs

* * *

[Filed March 14, 1962]

ORDER

Upon consideration of defendants' motion for summary judgment and of plaintiffs' cross-motion for summary judgment, and it appearing to the Court that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law, it is by the Court this 14th day of March, 1962

ORDERED that defendants' motion for summary judgment be and it hereby is denied; and it is

FURTHER ORDERED that plaintiffs' cross-motion for summary judgment be and it hereby is granted, and it is hereby declared that a transfer of function within the meaning of 5 U.S.C. 361 and pertinent regulations occurred when certain duties of the Shop Analysts and Schedulers were transferred to the Planners and Estimators, and that plaintiffs are entitled as of the date of said transfer to whatever rights, benefits and privileges they would have received by reason of it.

/s/ EDWARD M. CURRAN
United States District Judge

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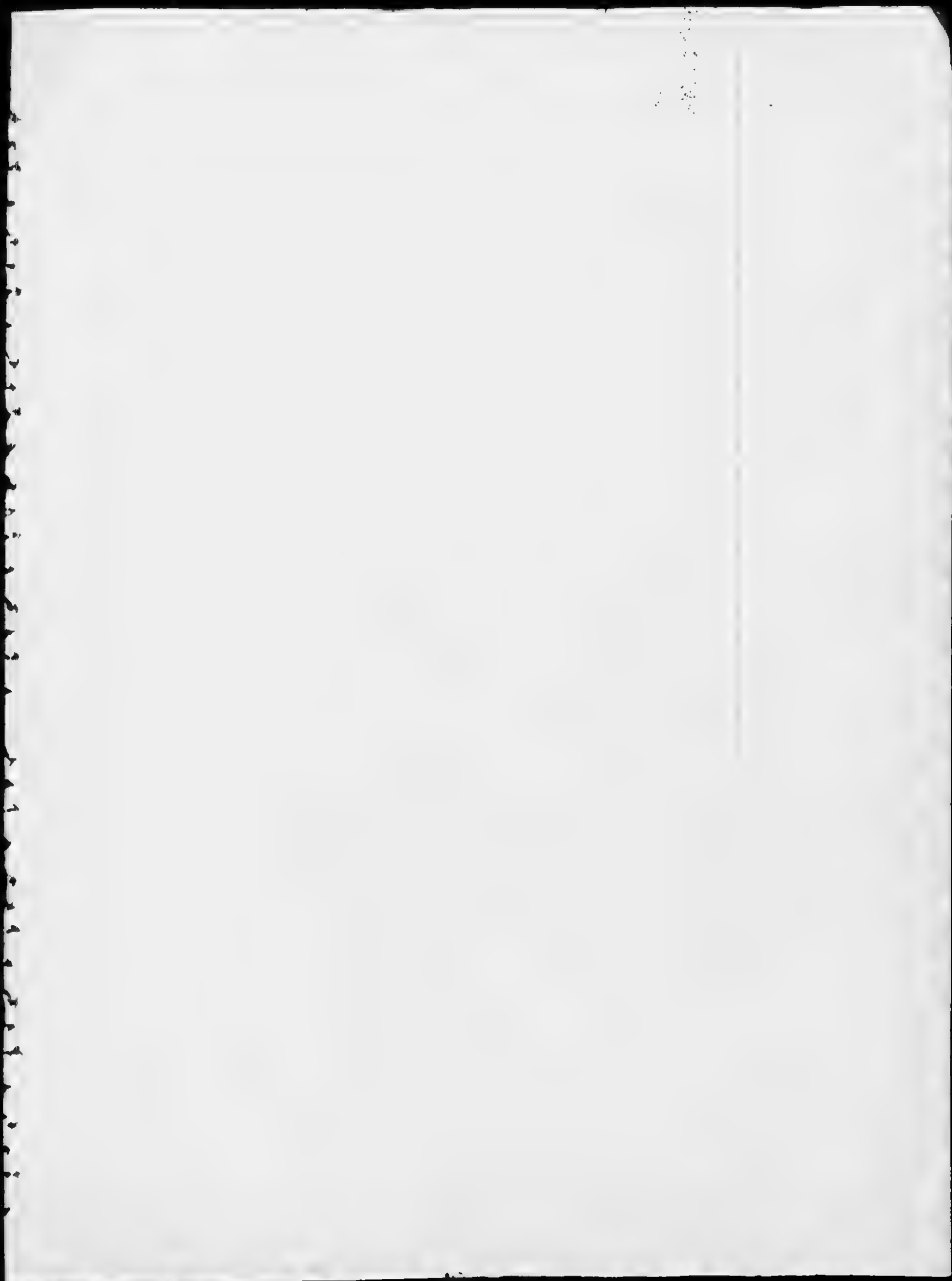
/s/ Donald M. Murtha
Attorney for Plaintiffs

[Filed May 11, 1962]

NOTICE OF APPEAL

Notice is hereby given this 11th day of May, 1962, that defendants hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 14th day of March, 1962 in favor of plaintiffs, against said defendants.

/s/ David C. Acheson,
United States Attorney.
Attorney for Defendants



**BRIEF OF THE NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, AMICUS CURIAE**

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,216

ROBERT S. McNAMARA, SECRETARY OF DEFENSE,
ET AL.,

Appellants,

v.

JOSEPH W. DICK, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

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for the District of Columbia Circuit

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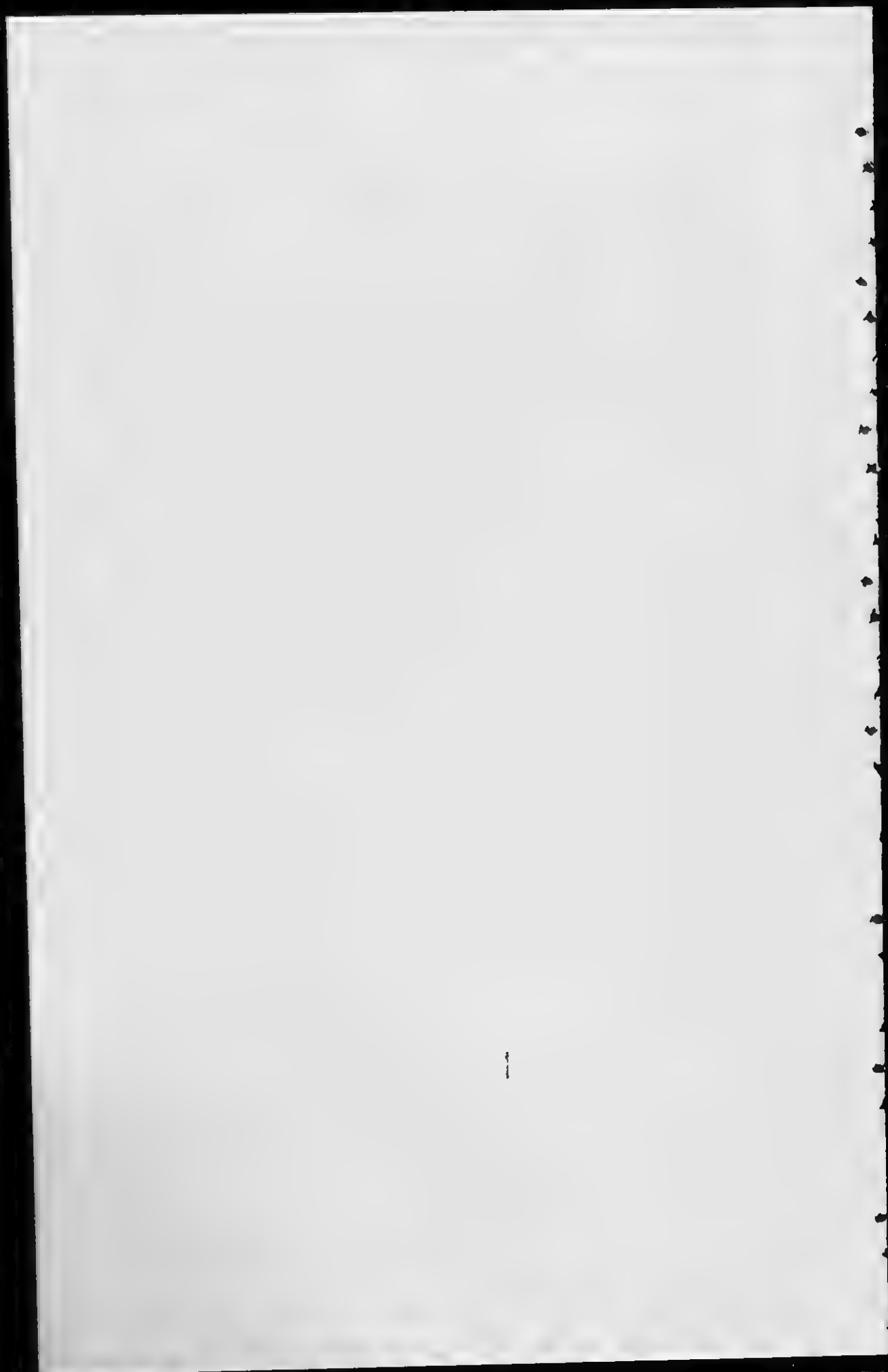
Joseph W. Stewart

CLERK

WARREN E. MILLER,
*Attorney for National Association
of Government Employees,
810 18th Street N.W.,
Washington, D. C.*

STATEMENT OF QUESTIONS PRESENTED

The question presented is whether the action of the Court below, in granting Appellees' Cross Motion for Summary Judgment, was correct; and in declaring "that a transfer of function within the meaning of 5 U.S.C. 861 and pertinent regulations occurred when certain duties of the Shop Analysts and Schedulers were transferred to the Planners and Estimators, and that plaintiffs are entitled as of the date of said transfer to whatever rights, benefits and privileges they would have received by reason of it."



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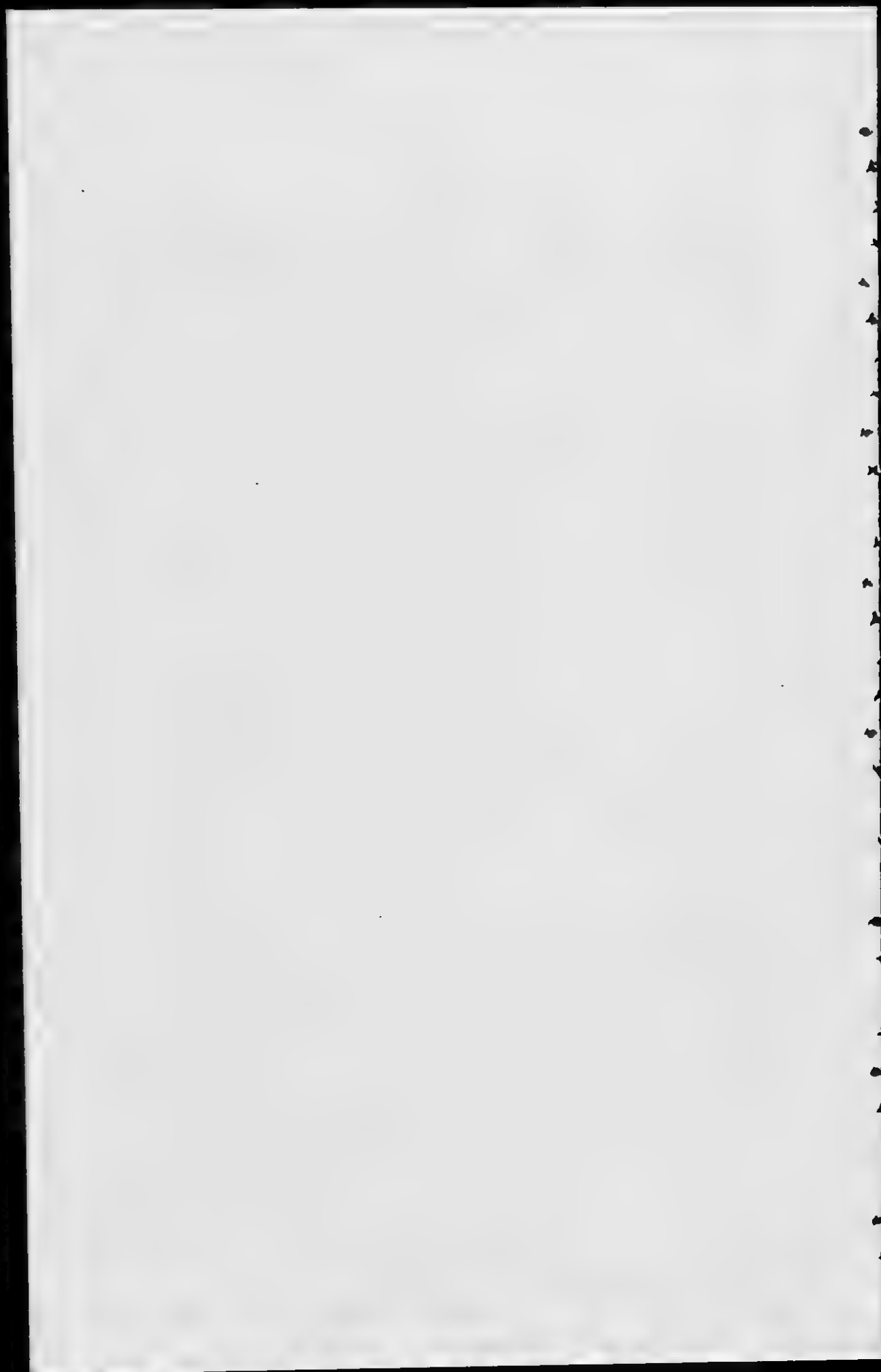
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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,216

ROBERT S. McNAMARA, SECRETARY OF DEFENSE,
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v.

Appellants,

JOSEPH W. DICK, ET AL,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

**BRIEF OF THE NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, AMICUS CURIAE**

Preliminary Statement

This brief is filed by the National Association of Government Employees, as Amicus Curiae, pursuant to the written consent of the parties to this cause of action, as provided for under Rule 18 (j) (1), of the United States Court of Appeals Rules for the District of Columbia Circuit, and pursuant to order of this Court.

This is an appeal from order of the court below (R174) denying Appellant's motion for summary judgment and

granting Appellees' cross motion for summary judgment; and declaring that a transfer of functions within the meaning of 5 U.S.C. 861 and pertinent regulations occurred when certain duties of the Shop Analysts and Schedulers were transferred to the Planners and Estimators and that Appellees are entitled as of the date of said transfer to whatever rights, benefits and privileges they would have received by reason of it.

The National Association of Government Employees, who file this *Amicus Curiae* brief, was organized in September, 1961, among persons employed by the Federal Government in Washington, D. C., and throughout the United States. Included among its objectives are the promotion of the general welfare of federal employees in all government agencies and the promotion of the merit system within the classified civil service. It is conservatively estimated that approximately 2,000 of the government employee members of this association will be adversely affected if a decision in this case is inimical to their interests.

The legal principles involved in this appeal are important to not only the approximately 2,000 members of the National Association of Government Employees which it is estimated may be affected, but will affect many, many other veterans who now and in the future are either given or deprived of the protection of the law enacted for their benefit.

Appellees were entitled to federal employment preferences under the Veterans' Preference Act of 1944 as amended, 5 U.S.C. 861. Appellees, for many years prior to 1960, were employed in the Production Department of certain Naval Shipyards in the rating of Analysts and Schedulers, and were in a different competitive level from, and received a higher rate of pay than the Planners and Estimators (J.A. 163).

Argument

We respectfully submit that the lower court was correct when it held (B174) that there was a "transfer of functions" as prescribed by 5 U.S.C. 861, and that Appellees are entitled as of the date of transfer of their functions to the rights, benefits, and privileges accruing to them by reason of such "transfer of functions" under the last proviso of 5 U.S.C. 861, which provides:

"AND PROVIDED FURTHER, That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions."

The record conclusively shows a transfer of Appellees' work and duties. We respectfully submit this can only mean a transfer of "functions" within the meaning of the above-quoted law.

The word "function" is defined in Funk & Wagnalls *New Standard Dictionary of the English Language*, 1947 Edition, at page 991 as follows:

"An office or *work* properly belonging or assigned to a person in a particular station or character." . . .

"One's proper business, *duty*, part or office." (Italics supplied.)

When, as here, the "work" and "duties" of Appellees were transferred, it is clear there was a "transfer of func-

tions" as that term is used in 5 U.S.C. 861, quoted above. It is significant that under §9-4 of the Navy's regulations* the word "work" is used in describing a function.

It is well established that the court may review the action of government agencies which, as here, violate the law. *Ritter v. Strauss*, 261 F.2d 767, 104, U.S. App. D.C. 301; *Feldman v. Herter*, 276 F.2d, 485, 107 U.S. App. D.C. 239. *Kintner v. Toll*, 276 F.2d, 486; *Powell v. Brannan*, 91 U.S. App. D.C. 16, 196 F.2d, 871; *Dismuke v. United States*, 297 U.S. 167, 80 L.Ed. 561.

Prior to the enactment of the third proviso of §12 of the Veterans' Preference Act the work was being moved and new employees hired to perform it. This constituted a device used to eliminate preference employees by a transfer or abolishing the function, thus depriving the old employees of their jobs which were taken over by the new employees.

The above practice was referred to in the hearings on H.R. 4115 before the Senate Civil Service Committee, 78th Cong., 2d Sess., page 10, and this third proviso of §12 of the Veterans' Preference Act was enacted to stop this practice.

It is our position that the third proviso of §12 of the Veterans' Preference Act is clear upon its face, and when standing alone it is fairly susceptible of but one construction. It means just what it says, that before each agency which is replaced by another agency may appoint additional employees from any other source for the jobs held by preference employees in the agency when its function is transferred to the second agency all preference employees then serving in the function transferred shall first be transferred to the replacing agency. The words of a statute should be interpreted in their ordinary significance and the meaning commonly attributed to them. *Lincoln v. Ricketts*, 297 U.S. 373, 376, 80 L. Ed. 724, 727. Not giving the natural

*Appendix of Appellees' Brief, pp. 34-35, subparagraph b(1), (2), and (4) uses the word "work" in describing a function. Subparagraph c, pp. 36-37 relates to "duties."

recognized meaning to the words of the statute here gives a meaning never intended by Congress.

Even if the Court should be of the opinion that the statute is of doubtful meaning and susceptible upon its face of more than one construction, when the Court looks into the reasons which induced the enactment of this Act, the mischiefs intended to be remedied, and the purpose intended to be accomplished by it, it will clearly appear that the construction urged by appellant will frustrate the purpose of this Act, and limit its scope. The construction urged by appellant would permit the continuation of practices which the Act was designed to remedy.

The Regulations as promulgated by the Navy Department (Appendix, Appellant's Brief 29-31) give the Department the right to determine competitive areas and competitive levels as well as special competitive areas. Under such regulations new areas may be established from time to time. "The area of competition" refers without rational derivation from the wording of the statute and presently, under appellant's theory, is subject to whatever meaning a Government agency or the Civil Service Commission may ascribe to it. These regulations were not authorized by statute.

The transfer of functions may occur in the same office or office building if the replacing agency chooses to occupy the same space as the replaced agency. The "area of competition" may be in different cities or states, miles apart. This provision of the Navy Regulations and practices followed by the Navy results in discriminatory action and nullification of the last proviso of 5 U.S.C. 861. This interpretation of said proviso is not only beyond statutory authority but contradicts, overthrows, and annihilates the plain meaning of the words in the statute.

Because this Act is applicable nationwide, if the interpretation urged by appellant is placed upon it by this Court,

and the transfer of function proviso, as enacted by the Congress is destroyed which will afford an opportunity to administrative officials of Government agencies to not only ignore and by-pass the express provisions of the statute but will provide a tool for them to further the situation which the Act was intended to prohibit.

The two cases upon which Appellant chiefly relies are distinguishable from this case and not controlling here.

The decision of this Court in the case of *Cutting v. Higley*, 98 U.S. App. D.C. 288, 235 F.2d 515, decided May 17, 1956, which Appellant indicates in its brief is one of the cases chiefly relied upon, was different from that existing in the instant case. In that case the Court was applying reassignment *after* the employee had been reached for reduction-in-force whereas these Appellees have not reached that point because they were not transferred with the functions and their reassignment after a reduction-in-force is not involved here.

The case of *Powell v. Brannan*, 91 U.S. App. D.C. 16, 196 F.2d 871, decided in 1952, which Appellant indicates in its brief is the other case upon which it chiefly relies, is not applicable here. There, the administrative officials found that by reason of the veteran's lack of qualifications he could not fill a particular position without additional training and therefore was not entitled to displace an incumbent who was performing the tasks satisfactorily. There a different regulation, 202.9(d), from the one here was involved. The factual difference between the two cases is apparent, and that case is no precedent for the situation here where a "transfer of functions" is involved. In that case the Court held that where there has been a misconstruction of governing legislation, or like error going to the heart of the administrative determination, judicial relief is obtainable, although no basis for relief was found to exist in that case.

Department Circular No. 740, Supplement No. 2 issued by the Civil Service Commission was made effective August 22, 1960, relating (R145) to transfer of functions, upon which Appellant relies, was issued June 23, 1960 (R145), seven months after the occurrence of the unlawful action here complained of. This *ex post facto* regulation cannot be given retroactive effect. *Miller v. U.S.* 294 U.S. 435, 349, 440, 79 Law Ed. 977, 980, 981.

Conclusion

In view of the foregoing as well as the reasons set forth in brief filed by the Appellee herein, judgment of the District Court should be affirmed.

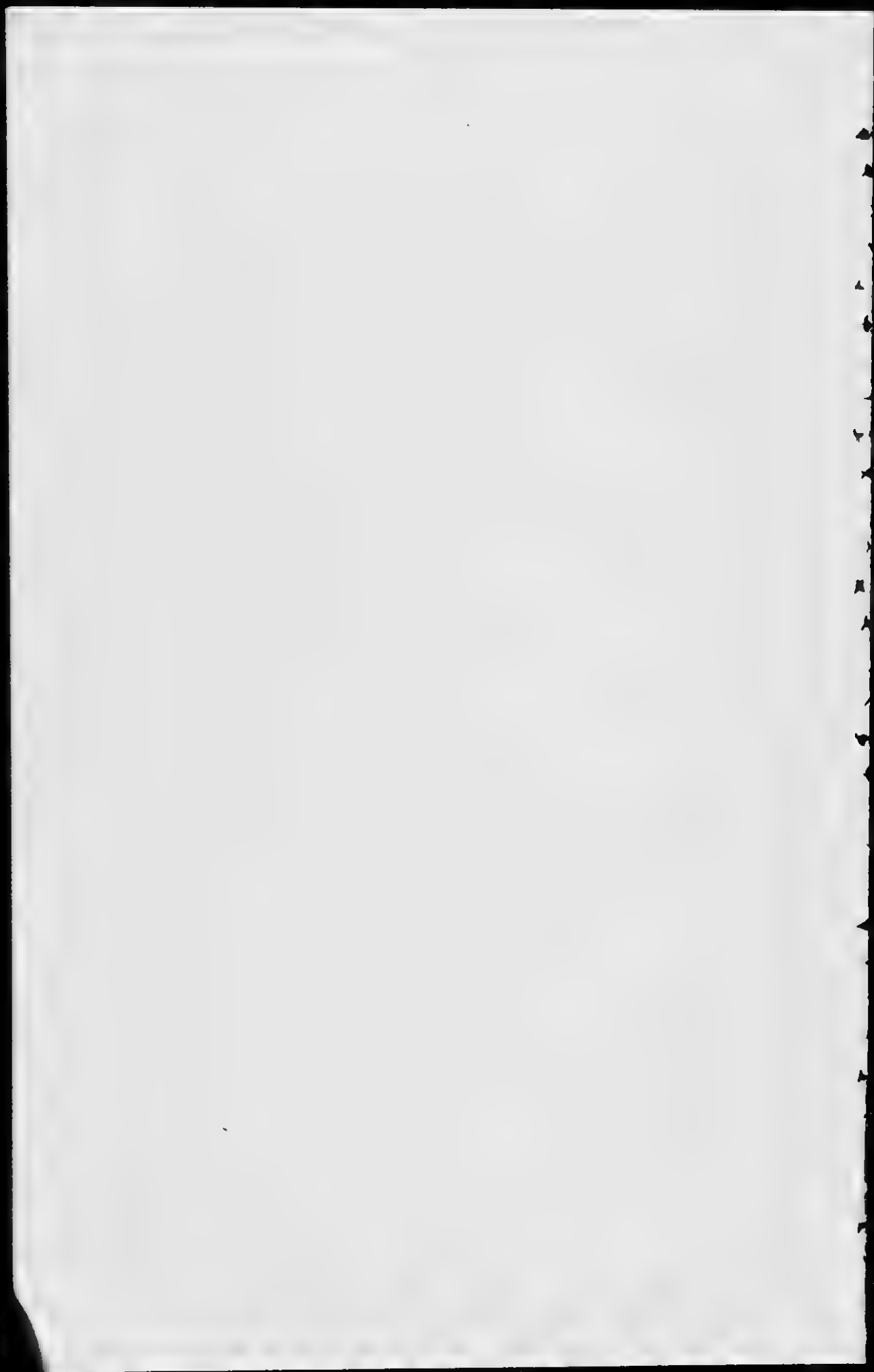
/s/ WARREN E. MILLER,
810 18th Street N.W.
Washington, D. C.,
Attorney for National Association
of Government Employees,
Amicus Curiae

Acknowledgment of Service

Service of a copy of the forgoing *Amicus Curiae* Brief Acknowledged this 28th day of December, 1962.

/s/ SHERMAN COHN,
Attorney,
Department of Justice,
Washington, D. C.,
Attorney for Appellants.

/s/ DONALD M. MURDKA,
1109 Tower Bldg.
Washington, D. C.,
Attorney for Appellees.



BRIEF FOR AMICUS CURIAE

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,216

ROBERT S. McNAMARA, SECRETARY OF DEFENSE, ET AL.,
Appellants,

v.

JOSEPH W. DICK, ET AL., *Appellees.*

On Appeal From the United States District Court for the
District of Columbia

United States Court of Appeals

for the District of Columbia Circuit

FILED

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Joseph W. Dick

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BERTRAM G. DAVIS

National Judge Advocate

The American Legion

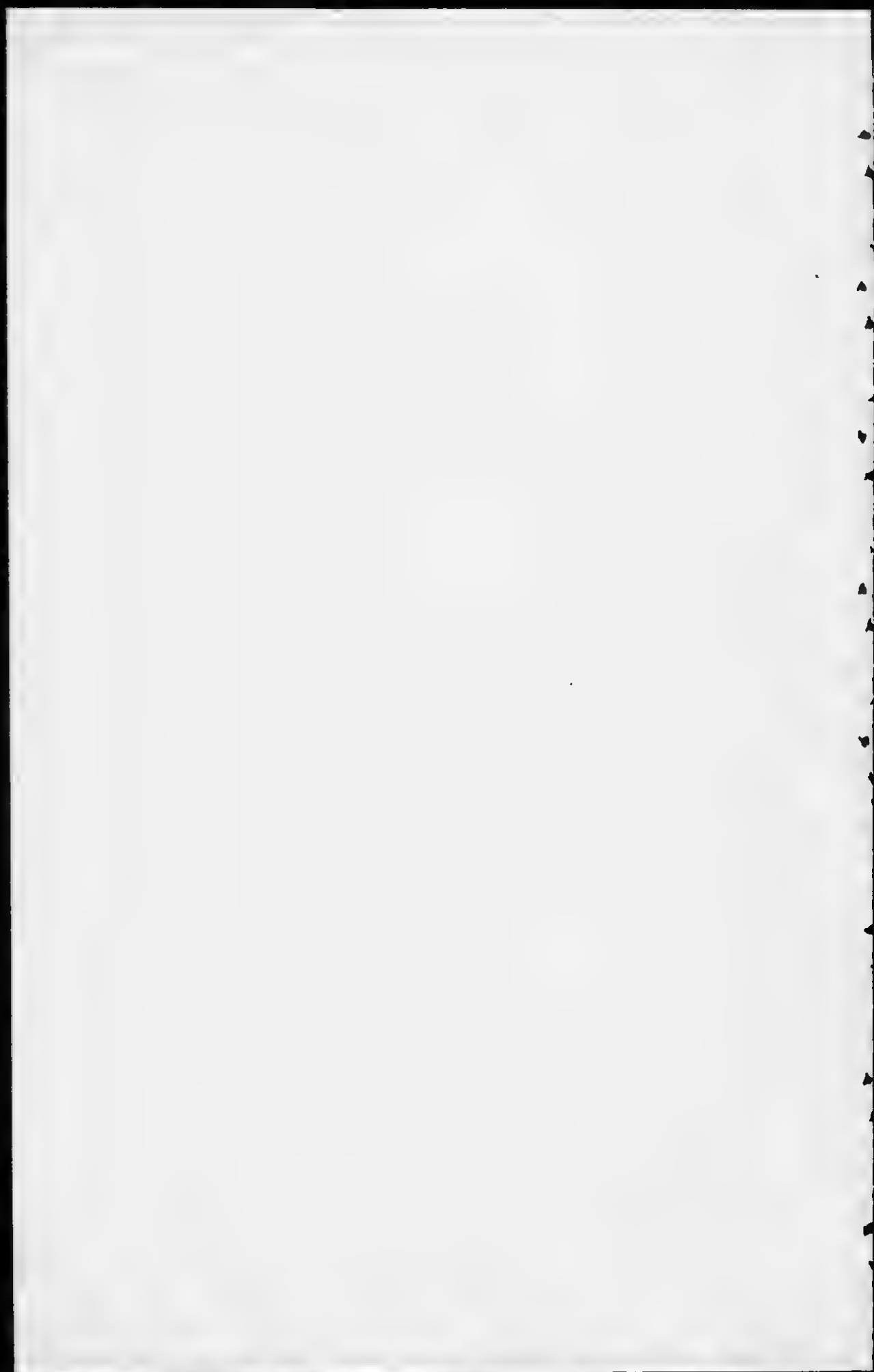
JOHN S. MEARS

700 N. Pennsylvania Street

Indianapolis 6, Indiana

Attorneys for the American

Legion Amicus Curiae



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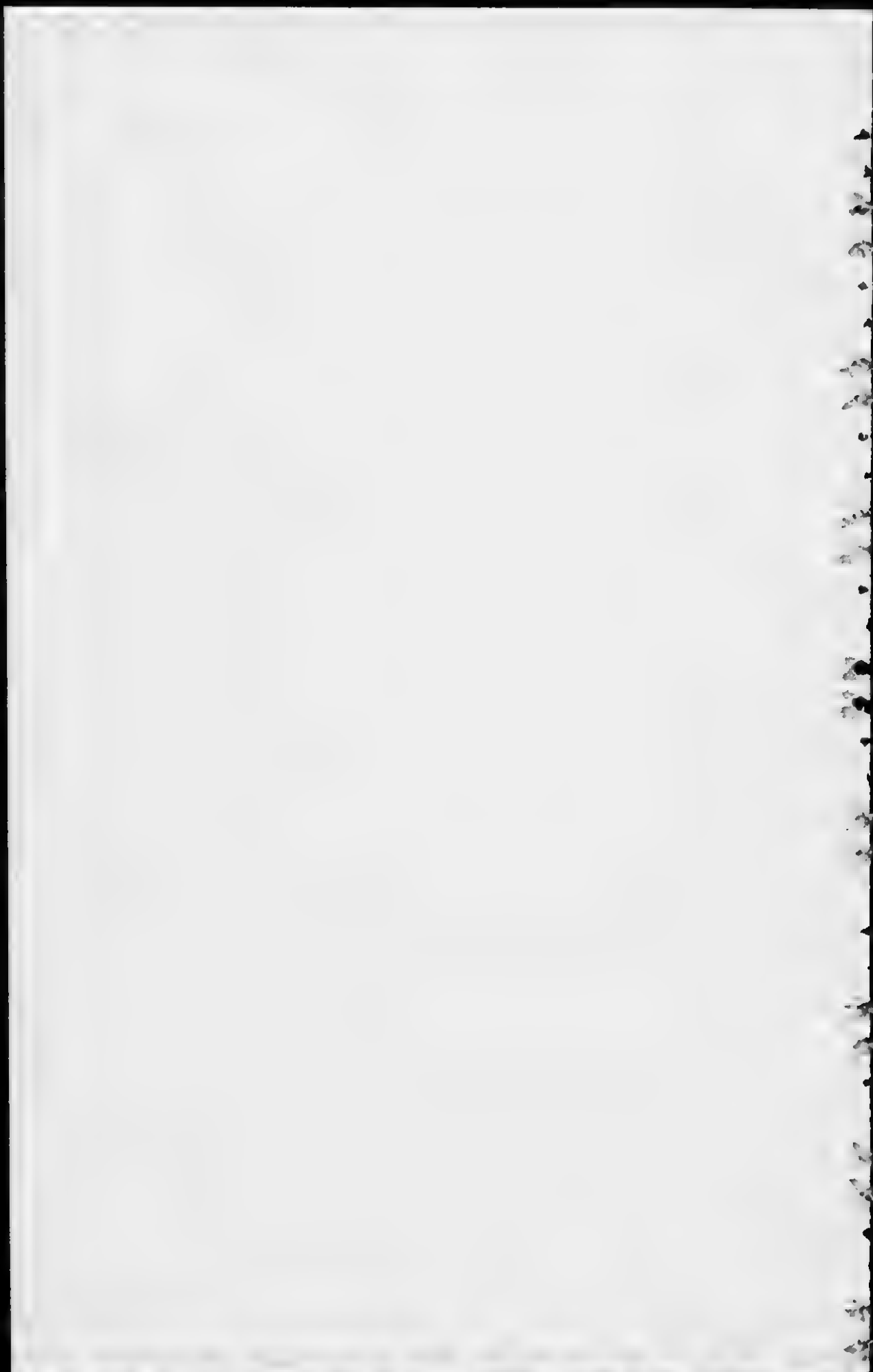
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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,216

ROBERT S. McNAMARA, SECRETARY OF DEFENSE, ET AL.,
Appellants,

v.

JOSEPH W. DICK, ET AL., *Appellees.*

On Appeal From the United States District Court for the
District of Columbia

BRIEF OF THE AMERICAN LEGION AMICUS CURIAE

PRELIMINARY STATEMENT

This brief is filed by The American Legion, as Amicus Curiae, pursuant to the written consent of the parties to this cause of action, all as provided for under Rule 18(j)(1), of the United States Court of Appeals Rules for the District of Columbia Circuit.

The American Legion is a non-political, civilian organization, originally chartered by Act of Congress, September 16, 1919, (U.S.C.A. Title 36, Sections 41-51, inclusive), which was last amended July 26, 1955 (U.S.C.A. Title 36, Sections 43-45).

The Federal Act outlines its purposes¹ and, inter alia, fixes eligibility for membership therein,² which comprises veterans of World War I, World War II, and the Korean Conflict who have served in the naval or military services of the United States between certain dates, or who, being citizens of the United States at the time of enlistment, served in the naval or military services of any of the governments associated with the United States during any of said wars; provided, however, that such persons shall have an honorable discharge or separation from such service, or continue to serve honorably after any of the terminal dates fixed by the aforesaid Federal Act.

The Legion is composed of fifty-eight (58) departments, forty-nine (49) of which are located within the continental

¹ PURPOSES OF CORPORATION

The purpose of this corporation shall be: To uphold and defend the Constitution of the United States of America; to promote peace and good will among the peoples of the United States and all the nations of the earth; to preserve the memories and incidents of the two World Wars and the Korean Hostilities fought to uphold democracy; to cement the ties and comradeship born of service; and to consecrate the efforts of its members to mutual helpfulness and service to their country. (As amended July 26, 1955, c. 386, § I, 69 Stat. 379, U.S.C.A. Title 36, Sec. 43).

² PERSONS ELIGIBLE TO MEMBERSHIP

No person shall be a member of this corporation unless he has served in the naval or military services of the United States at some time during any of the following periods: April 6, 1917, to November 11, 1918; December 7, 1941, to September 2, 1945; June 25, 1950, to July 27, 1953, all dates inclusive, or who, being a citizen of the United States at the time of entry therein, served in the military or naval service of any of the governments associated with the United States during said Wars or hostilities; Provided, however, that such person shall have an honorable discharge or separation from such service or continues to serve honorably after any of the aforesaid terminal dates. (As amended July 26, 1955, c. 386, § 2, 69 Stat. 380, U.S.C.A. Title 36, Sec. 45).

limits of the United States. These Departments, in turn, are organized into Posts, which at the present time number in excess of sixteen thousand (16,000). These said Posts which are located throughout the United States and in continental Europe comprise a total present membership in excess of two million nine hundred thousand (2,900,000) veterans.

The main objectives of The American Legion are the Rehabilitation and Welfare of veterans in general and their families, the promotion of a sound Americanism, and an adequate National Defense for the United States of America.

Our organization is neither dominated by capital nor labor, but is amply represented in every community by a cross section of both groups. Its membership is not restricted with respect to race, color, or creed, but rather is determined solely by the criterion of whether the applicant for membership has had honorable service in either or both of the World Wars or the Korean Conflict, all of which were fought that democracy might triumph and prevail.

The American Legion has, since its inception, concerned itself with and sponsored much legislation designed for the purpose of rehabilitating this nation's veteran class so that they might take their proper place in the community upon their return to civilian life and thus become useful citizens. The Legion has also sponsored much legislation designed for the care of widows and orphans of those veterans who paid the supreme sacrifice by giving their lives in the service of their country.

That The American Legion's unswerving devotion to this nation's veteran and his survivors has been constant is best exemplified by the myriad of statutes presently extant, dealing with veterans or their survivors, which were enacted largely through the efforts of the Legion,

acting by and through the officers of its several commissions and committees.

Principal among the many statutes that the Legion has sponsored and supported is the "Veterans Preference Act of 1944," Section 12 of which Act is here involved in this litigation. (June 27, 1944, c. 287, Sec. 12, 58 Stat. 390, amended 1949 Reorg. Plan No. 5, eff. Aug. 19, 1949, 14 F.R. 5227, 63 Stat. 1067, U.S.C.A. Title 5, Sec. 861). Indeed, The American Legion was instrumental in the drafting of the language of that statute. It is only natural then that the Legion is deeply concerned with the present litigation. The principles involved in this appeal, not only affect the appellees as veterans but, additionally, all other veterans who now may be, or who in futuro may be, similarly affected. To adopt the strained and unwarranted position of the appellants, the Government of the United States, in the appeal here involved, would be to thwart the will of the Congress of the United States, expressed through its legislative intent, to tear asunder a keystone in the arch supporting the Veterans Preference Act and to apply to the English language a distorted interpretation never intended by the Congress of the United States.

For these reasons The American Legion's interest goes far beyond the limited boundaries encompassing the personal considerations involving the appellees herein involved, who may be members of The American Legion, but rather its interest extends itself to the preservation of the bone and fabric of the Act itself.

ARGUMENT

It is the cardinal position of The American Legion that the third proviso of Section 12 of the Veterans Preference Act is couched in clear and understandable language and merits, as a matter of law, a broad literal interpretation if it is to carry out the announced objectives of the Congress of the United States. Prior to 1944 it was possible to

close down a place of employment in which veterans, enjoying the limited preferences then in effect, were employed, move the work being performed and thence proceed to hire new employees while concomitantly separating the old employees. This procedure had the obvious effect of eliminating employees with veterans preference. To correct this evil, The American Legion became the principal sponsor of language which was inserted into the Act for the specific purpose of causing the cessation of such practices. The legislative history of the Act establishes this fact clearly. When the Honorable Joe Starnes, the author of the Act, testified on H.R. 4115, before the Senate Committee on Civil Service, May 19, 1944, 78th Congress, 2nd Session, it is reported on p. 10 of the hearings that he described this practice as a "device which the veterans claim has been used against them to eliminate them from Government appointments by simply abolishing the function or transfer the function, and leaving the personnel out in the cold."

It is interesting to note that Congress has not sought to change the language of Section 12 of the Act. We do not believe, therefore, that there is any authority extant which would permit government departments or the Civil Service Commission to frustrate the purpose or limit the scope of the third proviso, of Section 12 of the Veterans Preference Act, by the promulgation of rules, interpretative procedures or practices that can be categorized as arbitrary, discriminating and legally without support.

If appellants prayer, that the District Court's decision be reversed, is granted Amicus can state from its practical experience, as an organization which has vitally interested itself in the operation of the Veterans Preference Act of 1944, for a period in excess of 18 years, that it will make possible the virtual destruction of the transfer of function proviso and will constitute an open invitation to the opponents of veterans preference to further curtail and avoid the Act.

1. It Is Patently Contrary to the Statute for the Civil Service Commission to Propose That a Transfer of Function Cannot Take Place Within An Area of Competition

Whatever the authority of the Civil Service Commission may be with respect to reduction in force actions under Section 12, of the Veterans Preference Act, it is specifically limited by the third proviso of said section which contains no language relating to "area" of whatever description. The term "area of competition" moreover, is a frame of reference which is without any rational connotation arising out of the statute. It is therefore, subject to whatever meaning government agencies or the Civil Service Commission choose to give it.

The government operating through reorganization plans and through other means is constantly transferring functions. The transfer may occur without any movement (in the words of the third proviso one agency may be replaced by another); the movement may occur from room to room, or floor to floor or from one town to another. The havoc which would ensue if veterans could be separated, merely because their transfer was within an "an area of competition," is obvious. The purpose of the third proviso of Section 12, of the Veterans Preference Act, discounts its application on a subjective basis. Were such a basis employed it could only result in discriminatory practices and nullification of the Statute.

2. Section 12. of the Veterans Preference Act Does Not Support An Exception Based on the Relation of the Duties Performed at the Affected Places of Employment

As nearly as can be determined the Commission is urging the Court to adopt a 1960 definition of "transfer of function"² which, in essence, provides that if two establishments are doing the same type of work there cannot be a transfer of functions. It does not require very close scrutiny of the third proviso of Section 12 of the Veterans

² Departmental Circular No. 740, C.S.C., Supp. No. 2; June 23, 1960. (JA p. 145).

Preference Act to observe that this interpretation is entirely beyond any authority contained in the statute. It is, in fact, in direct contravention of the language and purpose of the said third proviso of Section 12 of the Act.

It has been indicated, hereinbefore, that the legislative history of the said third proviso of Section 12 of the Act was to prevent the closing down of a place of employment, dismissing veterans, moving to a new location and subsequently hiring non-veterans. However, if we were to adopt the position of the Government of the United States we would be permitting Government Agencies to accomplish precisely what the Veterans Preference Act forbids. Such an act is without authority and can only result in rank discrimination. To exemplify the point: suppose two groups doing the same work were transferred, each to a different place; what reason exists to protect Group 1 whose activities are transferred to a location in which dissimilar activities are being performed and simultaneously to deny the same protection to Group 2 whose activities are transferred to a location in which similar work is being performed? Under the new "doctrine," Group 1 would be protected but Group 2 would be without the protection of the statute for as appellants would have it: Group 1 would be engaged in a "function" but Group 2 would not.

It is submitted that the word function was employed by the Congress of the United States in the Act for the purpose of providing the broadest possible concept to describe that which was being transferred.⁴ It is a general rule of statutory construction that words of a statute will be interpreted in their ordinary acceptation and significance and the meaning commonly attributed to them.⁵ The rule is that such words are to be given their

⁴ *Feldman v. Herter*, C.A. 1960, 276 F. 2d 485, 107 U.S. App. D.C. 239.
Kirby v. U.S., 1957, 155 F. Supp. 340, 140 Ct. Cl. 92.

⁵ *Lincoln v. Ricketts*, 297 U.S. 373 at p. 376, 80 L. ed. 734 at p. 727.

natural, received, popular, approved and recognized meaning. Certainly, the failure to do so in the instant case is tantamount to frustrating the purpose of the statute, herein involved, by attaching a presumption to the language employed which was never intended by the Congress of the United States. The only logical interpretation of the term "functions," contained in the third proviso of Section 12 of the Veterans Preference Act, is to give to that term its ordinary meaning; i.e., work or employment.*

CONCLUSION

It is urged that the policy extant for the sixteen years prior to 1960 be followed. That policy is reflected in Section 20.8(a) of the United States Civil Service Commission regulations, 5 C.F.R. 20.8(a), which gives to the third proviso, of Section 12 of the Veterans Preference Act, the meaning intended and in fact required, if the purpose of the statute, herein involved, is to be achieved and not frustrated.

To adopt the treatment of the third proviso of Section 12, of the Veterans Preference Act, as enunciated by the United States Civil Service Commission in Departmental Circular No. 740, Supplement No. 2, dated June 23, 1960, is to apply the said third proviso on an ad hoc basis which would, in our judgment, provide retroactive support to Government Agency departures from the statutes providing Veterans Preference. This can only lead to the

* With respect to question number two presented by appellants, amicus is not even slightly persuaded that it is supported by any legal basis. Considering that only passing reference is made to the point by appellants (app. brief p. 25) it is doubtful that appellants are themselves seriously persuaded. In any event we strongly oppose even the suggestion that the proviso becomes inoperative because of a variation in wages. Such an interpretation injects a determining factor never intended by Congress. For as this Court held in *Feldman v. Herter*, 276 F. 2d 485, 107 U.S. App. D.C. 239, this would countenance an arbitrary and unlawful administrative restriction on the protection to veterans clearly afforded by Congress.

development of distorted, ambiguous, inconsistent, and unlawful interpretations.

For the foregoing reasons and for the reasons set forth in appellees' brief judgment of the District Court should be affirmed.

BERTRAM G. DAVIS
National Judge Advocate
The American Legion

JOHN S. MEARS
700 N. Pennsylvania Street
Indianapolis 6, Indiana
MElrose 5-8411
Attorneys for the American
Legion Amicus Curiae

**BRIEF FOR AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AMICUS CURIAE**

In The

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 17,216

FILE JAN 3 1963

ROBERT S. McNAMARA, Secretary of Defense, et al.
Appellants

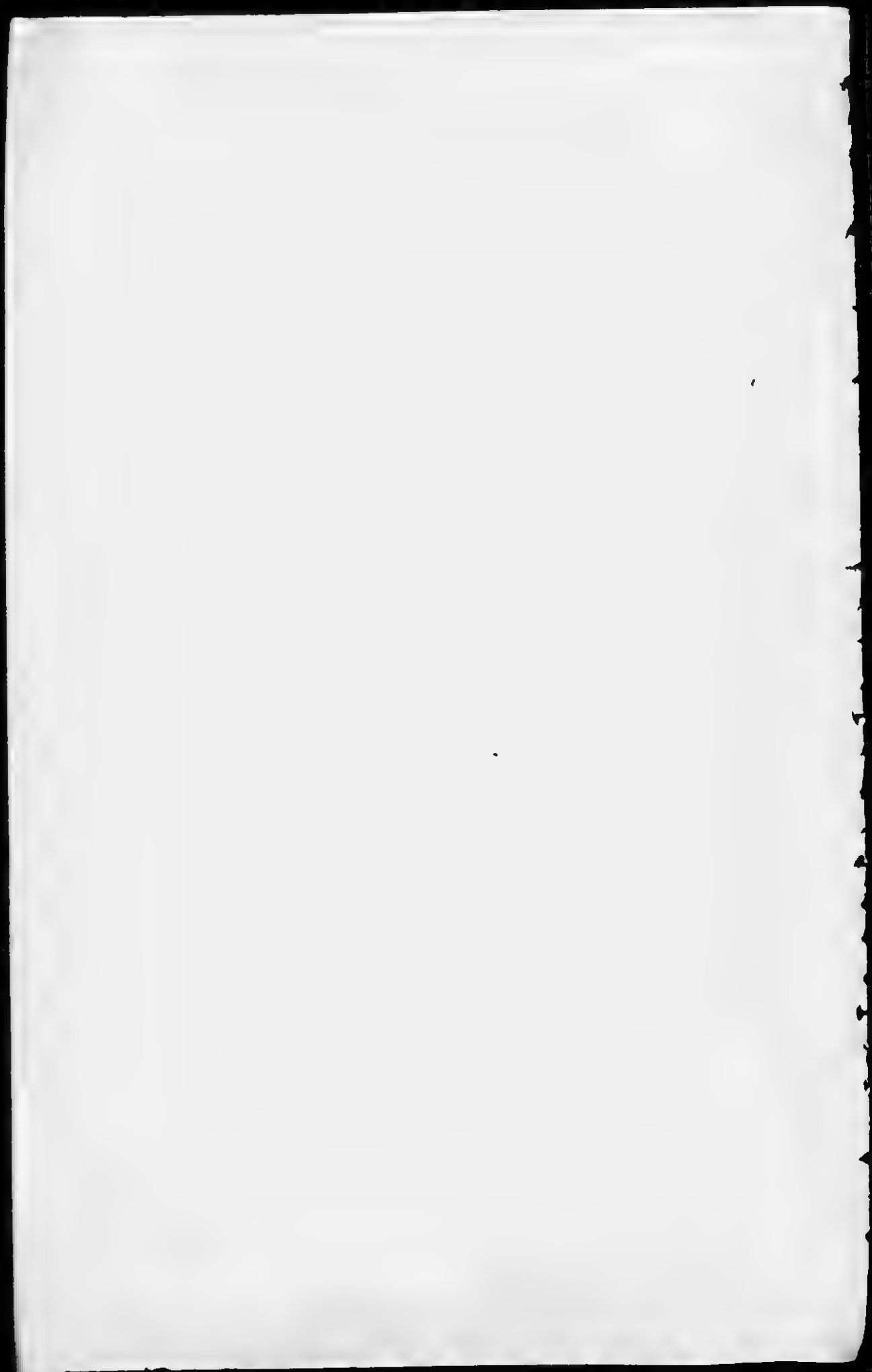
v.

JOSEPH W. DICK, et al., *Appellees*

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

J. F. GRINER
National President
American Federation of
Government Employees

ELMER G. NEUMANN
900 F Street, N.W.
Washington 4, D. C.
Attorney for Amicus Curiae



In The
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,216

ROBERT S. McNAMARA, Secretary of Defense, et al.,
Appellants

v.

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**BRIEF OF AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AMICUS CURIAE**

STATEMENT OF INTEREST

This brief is filed by the American Federation of Government Employees as Amicus Curiae, pursuant to motion and consent of the parties to this cause of action, all as provided for under Rule 18 of the Rules for the United States District Court for the District of Columbia.

The American Federation of Government Employees was originally chartered by the American Federation of Labor on August 18, 1932, and is currently affiliated with the American Federation of Labor-Congress of Industrial Organizations.

The Constitution of the American Federation of Government Employees outlines its objectives.¹

The Federation is composed of more than 900 lodges and has a membership in excess of 110,000. The Federation has lodges in each of the 50 states, and in the Panama Canal Zone, Guam, Iceland and Okinawa.

In furtherance of the "Objects and Methods" of this Federation we are concerned with legislative processes concerning our Country and our members. We must also be concerned with the judicial process insofar as administrative procedures affecting Federal employees may deviate from the Acts of Congress to the extent that said Acts may lose their purpose and intent.

The Civil Service Commission in Departmental Circular No. 740, Supplement 2, issued June 23, 1960, contains definitions and interpretations of the third provision of Section 12 of the Veterans Preference Act that fail to reflect the purpose of the law as evidenced by its language. Amicus is opposed to this assumption of authority on the part of the Commission and deeply concerned lest approval of these interpretations encourage a practice of administrative legislation at variance with the enactments of Congress and Executive Orders in the field of government employment. Requiring consistency of rulings in conformity with law is even more imperative now that Federal government employees' organizations have been given a wider area of participation in management-employee relations.

Amicus is concerned in this case with preserving the statutory meaning and with it the effectiveness of the "transfer

ARTICLE II

OBJECTS AND METHODS

SECTION 1. The object of this Federation shall be to promote the general welfare of civilian governmental employees.

SECTION 2. The Federation shall strive to promote efficiency in the governmental service, and shall advance plans of improvement to be secured by legislative enactment through co-operation with governmental officials and by other lawful means.

of function" proviso in Section 14 of the Veterans Preference Act.

The Veterans Preference Act was approved in 1944 and the proviso relating to transfer of functions during the intervening years, because of its simple, direct language has certainly not been the subject of confusion as the years of silence by the Commission so well attest. However, the positions advanced in this case in support of recent "interpretations" of the Act would create widespread inequities in addition to confusion.

Specifically, Amicus wishes to be heard in support of the principle that agency regulations are (1) enforceable and that retroactive interpretations are not binding and (2) the principle that statutory language is controlling and may not be ignored or amended by administrative bodies.

It is apparent therefore, that the A.F.G.E. has a vital interest in the questions before this Court.

For the reasons as set forth herein Amicus believe the judgment of the District Court should be affirmed.

1. Amicus strongly urges this Court to preserve and enforce the principle established by the Supreme Court^{*} and put into effect by the Civil Service Commission^{*} which gives enforceable rights to employees based upon the Regulations of the Agency in which they are employed. Particularly, now, under the new status given to employee organizations it is necessary and important that an Agency adhere to all lawfully established regulations governing the conditions of employment and the full range of the relations between the management and employees. It is a necessary corollary to this principle that an agency not be permitted to scrap its regulations when actions taken under them are challenged. They cannot lawfully amend the regulations and give them retroactive effect unless specifically

^{*} *Service v. Dulles*, 354 U.S. 363; *Watson v. U.S.* 355 U.S. 23.

^{*} Dept. Circ. No. 1019 (Appellees Brief Appendix A, p. 35).

authorized by statute. Amicus believes these are solid basic principles founded in law and should not be disturbed.

2. The Civil Service Commission acted beyond its authority in issuing the definitions of "function" and "transfer of function" and its interpretation limiting transfer to identical pay positions.

Appellants to avoid consequences of the plain language of the statute declare that "function" is not a word simply describing the work and employment of employees, but instead is to be defined in relation to the "overall mission". (JA 145)

In addition to "defining" the word "function", Supplement 2 undertakes to "define" the phrase "transfer of function". (JA 146) In essence, what is proposed is that within an "area of competition" a transfer of function cannot take place.

While it is recognized that some administrative problems may arise under the transfer of function proviso in Section 12 of the Veterans Preference Act, Amicus does not believe that this gives authority to the Civil Service Commission to ignore the statutory provision and take the law into its own hands as it does in Departmental Circular No. 740, Supplement 2, June 23, 1960. The Civil Service Commission is not authorized by the terms of the Veterans Preference Act to define its terms so as to give the words of the statute a meaning not intended by Congress. In the history of employment relations there is nothing new about the conflict that arises when a plant closes down in one place and opens in another, e.g. the run-away shops which sought to avoid state minimum standards relating to wages, safety, child labor, etc. In modern times we see unions negotiating contract terms to give protection if the shop is moved. Amicus has a very real interest in preventing the separation of employees in one place and movement of the operation to a new location, followed by the hiring of new employees. Furthermore, even if new employees are not hired there is

no equitable justification for putting the full onus of separation on the group of employees whose work is moved to another unit to be carried on by the employees of that unit. In the event of transfer, all of the employees from both locations should compete equally to determine who is to stay and who is to go, and this was the simple intent of proviso three of Section 12.

Amicus supports the arguments of the appellees that the "definitions" contained in Supplement 2 are not only unauthorized but are without legal foundation. Furthermore, the American Federation of Government Employees wishes particularly to call to the court's attention the negation of proviso three if the "area of competition" concept were approved. Appellees have made clear the obvious fact that the statutory language in no way suggests such limitation on the scope of "transfer of function". Moreover, the definition fails to meet the test of reasonableness and is not only arbitrary but opens the door for manipulation with a different application for each situation.

"Area of competition" has no fixed meaning. It can mean whatever an agency wants it to mean. Recently our attention has been called to an agency which fixed the entire United States as such an area;⁴ in another case Battle Creek, Michigan, and Washington, D. C. constituted an area of competition.

Further illustrative of the practical unworkability of the

⁴ We have the decision of the Commission which states "The record given to us by your employing agency shows that your competitive area was a normal competitive area, i.e., all of the U. S. Army Ordnance Missile Command." (letter from Fifth U. S. Civil Service Region, Atlanta, Ga., addressed to Raymond L. Reynolds, 710 Randolph Ave. S.E., Huntsville, Ala., under date of Sept. 20, 1962). This case was a reduction in force action as result of reorganization, not transfer of function, but the interesting fact is the designation of the entire U. S. missile command as a competitive area. In this situation that particular depot (Redstone Arsenal) could be closed and re-established elsewhere, and since they determined the entire U. S. missile command as a competitive area there would be no transfer of function and all employees would be dismissed under Departmental Circular 740, supp. 2, issued by the U. S. Civil Service Comm. June 23, 1960.

"area of competition" concept is the conflict which arises in applying the long adhered to position of the Commission that transfers may occur between agencies, departments, bureaus, branches, sections and smaller organizational units. (JA 139). The two concepts cannot exist side by side.

Finally, Amicus disputes the authority under the statute of the Commission in writing into the third proviso a condition that that proviso need not be obeyed when the rates of pay vary between the two affected units of organization. Amicus submits that this question was settled by this Court in *Feldman v. Herter*, 107 U.S. App. D. C. 239, 276 F2 485. In any event, the potential danger of manipulation is sufficient to bar approval.

CONCLUSION

Amicus again emphasizes the clear direct and simple language of the third proviso of Section 12 which must be applied as written by Congress. The term function is without meaning in the proviso unless it is to designate the work and duties being performed by employees in an agency, department, branch, section or smaller organizational unit. The Civil Service Commission acts outside of their authority when they attempt to write into such a statutory provision exceptions or conditions not specified by Congress. It is further submitted that, in the absence of specific statutory authority, rulings of administrative bodies are not to be given retroactive effect.

For the foregoing reasons the judgment of the District Court should be affirmed.

Respectfully submitted,

J. F. GRINER

National President

*American Federation of
Government Employees*

ELMER G. NEUMANN

900 F Street, N.W.

Washington 4, D. C.

Attorney for Amicus Curiae

